

A  
COLLECTION  
OF  
D E C R E E S  
BY  
THE COURT OF EXCHEQUER  
IN  
TITHE - CAUSES,  
FROM  
THE USURPATION TO THE PRESENT TIME.

---

V O L. III.



COLLECTION OF  
D E C R E E S

THE COURT OF COMMONS  
IN THE CAUSE

THE PETITION TO THE PRESIDENT

15 Pe

A  
COLLECTION  
OF  
D E C R E E S  
BY  
THE COURT OF EXCHEQUER  
IN  
TITHE-CAUSES,  
FROM  
THE USURPATION TO THE PRESENT TIME.

---

CAREFULLY EXTRACTED FROM  
THE BOOKS OF DECREES AND ORDERS  
OF  
THE COURT OF EXCHEQUER  
(By the Permission of the Court),  
AND ARRANGED IN CHRONOLOGICAL ORDER. WITH TABLES OF THE  
NAMES OF THE CASES, AND THE CONTENTS.

BY  
HUTTON WOOD,  
ONE OF THE SIX CLERKS OF THE COURT OF EXCHEQUER.

---

IN FOUR VOLUMES.  
VOLUME THE THIRD.

---

London:  
PRINTED BY BUNNEY, THOMPSON, AND CO.  
FOR THE AUTHOR,  
AND FOR G. G. AND J. ROBINSON, PATERNOSTER-ROW.

---

1798.

COLLECTION

DECREE

THE COURT OF

THE CHANCERY

THE CHANCERY

THE CHANCERY



THE CHANCERY

THE CHANCERY

THE CHANCERY

THE CHANCERY

THE CHANCERY

THE CHANCERY

THE CHANCERY

THE CHANCERY

THE CHANCERY

A

# T A B L E

OF

## THE NAMES OF THE CASES

TO

### THE THIRD VOLUME.

---

			<i>Page</i>
A.			
<b>A</b> BBOT <i>v.</i> Wilkinfon,		Barber <i>v.</i> Elliot,	178
Adams <i>v.</i> Windfor,	492	Baron (Williams <i>v.</i> ),	130
Adeane <i>v.</i> Serjaunt,	229	Barret <i>v.</i> Filmer,	14
Aistroppe (Bateman <i>v.</i> ),	4	Barrington (Wray <i>v.</i> ),	479
Allen <i>v.</i> Herbert,	257	Bartley (Penfold <i>v.</i> ),	351
Allott <i>v.</i> Wilkinfon,	460	Bateman <i>v.</i> Aistroppe,	460
Amler <i>v.</i> Jackson,	406	Bates (Powlett <i>v.</i> ),	466
Anderson (Carter <i>v.</i> ),	492	Batten (Borlase <i>v.</i> ),	499
Andrews <i>v.</i> Eaton,	225	Beaumont <i>v.</i> Shilcot,	171
Annesley (Brown <i>v.</i> ),	329	Beaumont (Taylor <i>v.</i> ),	401
Appleton (Heathcote <i>v.</i> ),	407	Bedford <i>v.</i> Sambell,	514
Arnold (Lord Lonsdale <i>v.</i> ),	98	Bendlowes (Thorpe <i>v.</i> ),	38
Ashforth (Bromhead <i>v.</i> ),	478	Benison <i>v.</i> Smith,	345
Aydon (Worsley <i>v.</i> ),	519	Bennet <i>v.</i> Tocker,	460
Ayre (The Bishop of Oxford <i>v.</i> ),	347	Bewick <i>v.</i> Nicholls,	243
	383	Bickerton <i>v.</i> Chennel,	454
	360	Bickham <i>v.</i> Langdale,	139
		Bilton (Naylor <i>v.</i> ),	399
		Bingham <i>v.</i> Okenden,	26
		Bishop of Ely (Salmon <i>v.</i> ),	169
		Bishop of Exeter <i>v.</i> Skinner,	485
		Bishop of Oxford <i>v.</i> Ayre,	360
		Bishop of Oxford <i>v.</i> Collins,	358
		Bishop	
B.			
Bailey (Cartwright <i>v.</i> ),	146		
Ball <i>v.</i> Robinson,	470		

### A TABLE OF THE NAMES OF THE CASES.

	<i>Page</i>		<i>Page</i>
Bishop of Oxford v. Richmond,	360	Coates (Hugill v.),	73
Booth v. Saxon,	177	Cockbourne v. Utterman,	18 notis
Booth v. Wright,	288	Collins (Saurey v.)	181
Borlase v. Batten,	499	Collins (The Bishop of Oxford v.),	358
Boscawen v. Roberts,	174	Comer (Bowler v.)	519
Bowles v. Comer,	519	Cornell (Tookie v.)	375
Bowles v. Lockett,	125	Cox v. Yateman,	302
Bowyer (Law v.),	521	Cunnet (Trewin v.)	246
Bradshaw (Wetherhead v.)	426	Cuthbert v. Wright	354
Branfon (Hill v.),	18		
Breary v. Manby,	43		
Brecknock (Kynaston v.)	12		
Bree v. Chaplin,	409	D.	
Brewer (Fleming v.)	194	Day v. Lake,	536
Brickkale v. Earle,	422	Day (Maddock v.),	416
Briggs (Green v.)	292	Day (Tuthill v.),	85
Brograve v. Mace,	396	Dean and Chapter of Westminster v.	
Bromhead v. Ashforth	347	Gwilliam,	253
Brook (Gilbert v.),	476	Dockwray v. Riddell,	138
Brown v. Annesly,	98	Duke of Norfolk v. Taylor,	112
Brown v. Butler,	1		
Brown (Llwyd v.)	106	E.	
Buck (Hole v.),	23	Eade v. Gooch,	543
Budd (Knowler v.),	95	Eardley (Taylor v.),	231
Burgin (Noel v.),	270	Earl (Brickdale v.),	422
Burroughs (Edwards v.),	374	Eaton (Andrews v.),	407
Burrough (Stirling v.),	75	Edwards v. Burroughs,	374
Burt (Ibbettson v.),	278	Elliott (Barber v.)	178
Butcher (Lloyd v.),	160	Ellis v. Fermor,	381
Butler (Brown v.),	1	Elvey v. Price,	63
Buxton (Hurd v.)	379	Ely (The Bishop of) (Salmon v.),	169
		Emmett v. White,	215
C.		Erskine v. Ruffle,	240
Cabell (Churchill v.),	108	Evans v. Gwillim,	20
Caldwalll (Glas v.),	403	Exeter (The Bishop of) v. Skinner,	485
Carpenter (Gale v.),	173	Eyre v. Gibberd,	334
Carter v. Anderson,	329		
Cartwright v. Bailey,	146	F.	
Champion (Rogers v.)	475	Faest (Torriano v.),	62 notis
Channon (Hawkins v.)	452	Fermor (Ellis v.),	381
Chaplin (Bree v.)	409	Filmer (Parrett v.)	14
Chapman (Piper v.)	448	Filmer (Fowell v.),	550
Chennel (Bickerton v.)	454	Fleet (Jones v.),	71
Chitty (Abdy v.)	229	Fleming v. Brewer,	194
Churchill v. Cabell,	108	Flint (Walter v.),	293. 508
Clark (Pyle v.),	103	Fotheringham (Willis v.),	330
Clarke v. Roads,	488	Fowell	
Clarke v. Stapler,	121		
Clarke (Williams v.),	24		
Cleeves v. Knyfton,	447		



## A TABLE OF THE NAMES OF THE CASES.

		Page			Page
Fowell v. Filmer,	-	550	Holmwood (Mather v.),	-	119
Froome v. Rawlins,	-	547	Hooper (Wilson v.),	-	490
			Horton v. Goddard,	-	147
			Howley v. Venables,	-	208
			Huddesford v. Smith,	-	235
G.			Hughes v. Humble,	-	41
			Hugill v. Coates,	-	73
Gale v. Carpenter,	-	173	Hulse v. Munk,	-	211
Garrard v. Schollar,	-	415	Humble (Hughes v.),	-	41
Gibbard (Eyre v.),	-	334	Hume v. Wright,	.	520
Gilbert v. Brook,	-	476	Hurd v. Buxton,	-	379
Gill (Travis v.),	-	372	Hutton v. Steevens,	-	93
Glas v. Calwall,	-	403			
Goddard (Horton v.),	-	147			
Gooch (Eade v.),	-	543			
Goodfellow v. Roberts,		301	I. and J.		
Gratwick v Utterman	-	18 notes			
Green v. Briggs.	-	293			
Greenhill (Peacock v.),	-	315	Jackson (Amherst v.),	-	225
Greenhill v. Peacock,	-	320	Jackson v. Hinde,	-	440
Griffin (Lovat v.)	-	219	James (Williams v.)	-	510
Guy (Schutz v.),	-	164	Ibbetson v. Burt,	-	278
Gwillim (Evans v.)	-	20	Jenkins v. Pym,	-	280
Gwilliam (Dean and Chapter of Westminster v.),	-	253	Jocelyn (Wray v.),	-	204
			Jones v. Fleet,	-	71
			Jones (Le Clerk v.),	"	541
			Iremonger (Woodcock v.),	"	50

## H.

Halfhead v. Merry,	-	66
Hamond (Rooke v.),	-	82
Hancock (Liddell v.),	-	161
Harris (Wills v.),	-	385
Harrison (Wood v.),	-	250
Hartas (Shepherd v.),	-	503
Harvey (Willis v.),	-	196
Hastings v. Toon,	-	455
Hattersley (Kynaston v.),	-	9
Hawkins v. Channon,	-	452
Hawley (Kynaston v.),	-	135
Hayward (Walbank v.),	-	512
Heathcote v. Appleton,	-	478
Heathfield v. Troffe,	-	245. 247
Heaton v. Miller,	-	373
Helyar v. Trift,	-	128
Henning v. Willis,	-	29
Herbert (Allen v.),	-	406
Hicks v. Triefe,	-	363
Hill v. Branfon,	-	18
Hill v. Maton,	-	167
Hinde (Jackson v.)	-	410
Hole v. Buck,	-	23

K.

King (Stirling v.),	-	87
Knowles v. Budd,	-	95
Knyfton (Cleaves v.),	-	447
Kynaston v. Brecknock,	-	12
Kynaston v. Hattersley,	-	9
Kynaston v. Hawley,	-	135
Kynaston v. Piercy,	-	469

L.

Lady Humble (Hughes v.),	41
Lake v. Day,	536
Lampard (Mitchell v.)	58
Lander v. Spencer	509
Lane (Quick v.),	538
Langdall v. Bickham,	139
Law v. Bowyer,	521
Layton v. White,	154
Le Clerk v. Jones,	541

34  
Legge

### A TABLE OF THE NAMES OF THE CASES.

	Page	P.		Page
Legge (Torriano v.),	- 61		Page (Wells v.),	- 299
Liddell v. Hancock,	- 161		Parkin (Rogers v.),	- 296
Lloyd v. Butcher,	- 160		Parry (Sellon v.),	- 435
Lloyd v. Mortimer,	- 516		Parry v. Thomas,	- 488
Lord Londale v. Arnold,	- 519		Peacock v. Greenhill,	- 315
Lovat v. Griffin,	- 219		Peacock (Greenhill v.),	- 320
Luckett (Bowles v.),	- 125		Penfold v. Bartley,	- 35
Lumley (Thornton v.),	- 44		Pennel v. Olding,	- 444
Llwyd v. Brown,	- 106		Pickerfgrill v. Sargison,	- 275
			Piercy (Kynaston v.),	- 469
M.			Piper v. Chapman,	- 448
Mace (Brograve v.),	- 396		Platt (Price v.),	- 87 notes
Maddock v. Day,	- 416		Pollock v. Serjeant,	- 377
Manby (Breary v.),	- 43		Powlett v. Bates,	- 466
Mason (Gravis v.),	- 531		Price v. Elvey,	- 63
Mason (Wilson v.),	- 285		Price v. Platt,	- 87 notes
Masters v. Standley,	- 53		Price (Smith v.),	- 446
Mather v. Holmwood,	- 119		Prytherch v. Thomas,	- 350
Maton (Hill v.),	- 167		Pultney v. Utterman,	- 16
Maundrell (Smith v.),	- 332		Pyle v. Clark,	- 103
Merry (Halstead v.),	- 66		Pyme (Jenkins v.),	- 280
Michell v. Lampard,	- 58			
Miller (Heaton v.),	- 373		Q.	
Moore (Tooker v.),	- 349		Quick v. Lane,	- 538
Morgan v. Neville,	- 152, 434			
Morgan v. Williams,	- 451		R.	
Mortimer (Lloyd v.),	- 516		Rawlins (Froome v.),	- 547
Munk (Hulse v.),	- 211		Read (White v.),	- 158
N.			Richmond (The Bishop of Oxford v.),	- 360 notes
Naylor v. Bilton,	- 399		Riddell (Dockwray v.),	- 138
Neville (Morgan v.),	- 152, 434		Roads (Clarke v.),	- 488
Nicholls (Bewick v.),	- 243		Roberts (Boicawen v.),	- 174
Noel v. Burgin,	- 270		Roberts (Goodfellow v.),	- 301
Norfolk (The Duke of) v. Taylor,	- 112		Robinson (Ball v.),	- 470
O.			Robinson (Shaw v.),	- 323
Odling (Pennel v.),	- 444		Roch v. Summers,	- 218
Oeden (Bingham v.),	- 26		Rogers v. Champion,	- 475
Oxford (The Bishop of) v. Ayre,	- 360		Rogers v. Parkin,	- 296
Oxford (The Bishop of) v. Collins,	- 358		Rogers v. Twibell,	- 472
Oxford (The Bishop of) v. Rich- mond,	- 360 notes		Rooke v. Hamond,	- 82
Oxton (Travis v.),	- 523		Rooke v. Tolputt,	- 77
			Raffle (Erskine v.),	- 240

Salmon

# A TABLE OF THE NAMES OF THE CASES.

S.		Page			Page
Salmon v. The Bishop of Ely,	-	169	Tomlinson (Townley v.),	-	31. 336
Salt v. Swaine,	-	297	Tooker v. Moore,	-	349
Sambell (Bedford v.),	-	514	Tookie v. Cornell,	-	375
Sargison (Pickersgill v.),	-	275	Toon (Hastings v.),	-	455
Savage v. White,	- 15	notis	Topping (Umfreville v.),	-	12 notis
Sawrey v. Collins,	-	181	Torriano v. Feast,	-	62 notis
Saxon (Booth v.),	-	177	Torriano v. Legge,	-	61
Schollar (Gerrard v.),	-	415	Townley v. Tomlinson,	-	31. 336
Sellon v. Parry,	-	435	Travis v. Gill,	-	372
Serjeant Pollock v.),	-	377	Travis v. Mafon,	-	531
Serjeant v. Adeane,	-	257	Travis v. Oxtan,	-	523
Sharpe (Stanley v.),	-	67	Trewin v. Cunnent,	-	246 notis
Shaw v. Robinson,	-	323	Triefe (Hicks v.),	-	363
Shepherd v. Hartas,	-	503	Trift (Helyar v.),	-	128
Shilcot (Beaumont v.),	-	171	Trosse (Heathfield v.),	-	245. 247
Shotton (Snowden v.),	-	366	Tuthill v. Day,	-	85
Shutz v. Guy,	-	164	Twibell (Rogers v.),	-	472
Skinner (The Bishop of Exeter v.),	-	485	V.		
Smith (Benison v.),	-	345	Venables (Howley v.),	-	207
Smith (Huddesford v.),	-	235	U.		
Smith v. Maundrell,	-	332	Umfreville v. Topping,	-	12
Smith v. Price,	-	446	Utterman (Cockbourne v.),	-	18 notis
Snowden v. Shotton,	-	366	Utterman (Gratwick v.),	-	18 notis
Spencer (Lander v.),	-	509	Utterman (Pulteney v.),	-	16
Stanley v. Sharpe,	-	67	W.		
Standley (Masters v.),	-	53	Walbank v. Hayward,	-	512
Stapler (Clarke v.),	-	121	Walter v. Flint,	-	293. 508
Stephenfon (Warton v.),	-	370	Warton v. Stephenfon,	-	370
Stevens (Hutton v.),	-	93	Waugh (Timmins v.),	-	90
Stirling v. Burrough,	-	75	Wells v. Page,	-	299
Stirling v. King,	-	87	Westminster (The Dean and Chapter of) v. Gwilliam,	-	253
Street v. Woods,	-	266	Wetherhead v. Bradshaw,	-	426
Summers (Roch v.),	-	218	White (Emmett v.),	-	215
Swaine (Salt v.),	-	297	White v. Layton,	-	154
T.			White v. Read,	-	158
Taylor v. Beaumont,	-	401	White (Savage v.),	-	15 notis
Taylor (The Duke of Norfolk v.),	-	112	Wilkinson (Abbot v.),	-	492
Taylor v. Fardley,	-	231	Williams v. Baron,	-	130
Thomas (Parry v.),	-	488	Williams v. Clarke,	-	24
Thomas (Prytherih v.),	-	350	Williams v. James,	-	510
Thornton v. Lumley,	-	44	Williams		
Thorpe v. Bendlowes,	-	38			
Timmins v. Waugh,	-	90			
Tocker (Bennett v.),	-	460			
Toddington v. Young,	-	180			
Tollputt (Rooke v.),	-	77			

# A TABLE OF THE NAMES OF THE CASES.

	<i>Page</i>		<i>Page</i>
Williams (Morgan v.),	- 451	Wray v. Barrington,	- 479
Willis v. Fotheringham,	- 330	Wray v. Jocelyn,	- 204
Willis (Henning v.),	- 29	Wright (Booth v.),	- 288
Willis v. Harvey,	- 196	Wright (Cuthbert v.),	- 354
Willis v. Harris,	- 385	Wright (Hume v.),	- 520
Wilson v. Hooper,	- 490		
Wilson v. Mason,	- 285		
Windfor (Adams v.),	- 4	Y.	
Woodcock v. Iremonger,	- 50		
Wood v. Harrison,	- 250	Yateman v. Cox,	- 302
Woods (Street v.),	- 266	Young (Toddington v.),	- 180
Worsley v. Aydon,	- 383		



## ERRATA ET ADDENDA.

---

N. B. In vol. I, page 440, read "*Longborough*, ALIAS *Longbergb*," instead of "*Loughborough*."

---

Page 58, Line 30, read "*plaintiff*" instead of "*plaintiffs*."

— 69, Line 22, read "*contented*" instead of "*contended*."

— 124, Lines 12 and 13, strike out the words, "*rye grass seed and saintfoin seed*."

— 130, In the marginal note, read "*defendants admit*" instead of "*defendants*  
"*admits*."

— 138, Line 2, read "*twenty*" instead of "*twety*."

— 229, Line 18, read "*improprie*" instead of "*impropaiate*."

— 291, Line 35, read "1771" instead of "1721."

— 311, Line 42, read of "*lands part*" instead of "*land parts*."

— 326, Line 19, read "*thirty pounds or upwards*."

— 332, Line 17, read "*after-mentioned*."

— 342, Line 22, read "*with certainty*" instead of "*certainly*."

— 364, Line 39, read "*untruly*" instead of "*truly*."

— 368, Line 25, read "1767" instead of "1667."

— 371, Line 13, read "*become*" instead of "*became*."

— 372, Line 14, read "*an*" instead of "*and*."

— 383, Line 20, read "1634" instead of "1734."

— 412, Line 2, read "*restraining*" instead of "*restaining*."

— 432, Line 33, read "*be*" instead of "*by*."

— 443, Line 26, read "*it had always been*" instead of "*it has always had been*."

— 446, Line 14, read "*calves*" instead of "*caleves*."

— 451, Line 25, read "*trial*" instead of "*action*."

— 454, Line 31, read "*to have paid*" instead of "*been paid*."

— 465, Line 26, read "*same for*" instead of "*same to*."

— 472, Line 1, read "*or occupier*" instead of "*occupiers*."

— 480, Line 7, read "*Cambridge*" instead of "*Canterbury*."

— 491, Line 47, read "*stilling*" instead of "*stillings*."

— 492, read "*Allott v. Wilkinson*" instead of "*Abbott v. Wilkinson*."

— 499, Line 43, read "*become*" instead of "*beame*."

— 500, Line 1, read "*the*" instead of "*itbe*."

— 500, Line 29, read "*but*" instead of "*dut*."

— 501, Line 16, read "*ruben*" instead of "*rwieb*."

— 504, Line 43, read "*they had been made*."

— 505, Line 10, read "*posseffions*" instead of "*posseffion*."

---



FRATERNITY

No. 1000

Page 1000

Page 1000

Page 1000

Page 1000

Page 1000

Page 1000

Page 1000

Page 1000

Page 1000

Page 1000

Page 1000

Page 1000

Page 1000

Page 1000

Page 1000

Page 1000

Page 1000

Page 1000

Page 1000

Page 1000

Page 1000

Page 1000

Page 1000

Page 1000

A  
COLLECTION  
OF  
DECREES  
BY  
THE COURT OF EXCHEQUER  
IN  
TITHE - CAUSES,  
DURING  
THE REIGN OF GEORGE THE THIRD.

BROWN *against* BUTLER.  
*Oxfordshire, 18th February 1761.*

HILARY TERM  
1. GEO. 3.

**T**HE bill stated, that the plaintiff *Brown* had been, for several years last past, and then was, rector of the rectory and parish church of *Bletchington*, in the county of *Oxford*; that the said rectory had been immemorially a parsonage presentative, with cure of souls; that certain glebe lands and all manner of tithes, both great and small, arising within the parish and the titheable places thereof, belong to the said rectory, and particularly the tithes of all dry cattle, calves, lambs, pigs, geese, wool, milk, eggs, underwood, furze, turnips, and the aftermath or second crop of clover, depastured, born, or grewed on the lands in the possession of the defendants; that the defendants, or some of them, had been, for several years last past, owners or tenants of the several and respective farms, lands, and grounds, particularly mentioned in the bill, and also of a corn mill, the tithes of which the plaintiff is likewise entitled to; that they, or some of them, had, for three years past, fed, depastured, and agisted barren and unprofitable cattle on their respective farms, and had calves, lambs, pigs, and geese, calved, lambled, littered,

The rector of *Bletchington*, in *Oxfordshire*, claims the tithes of the parish in kind.

See *Brown v. Annesley*. post, 29th April 1765.

VOL. III.

B

and

BROWN  
against  
BUTLER.

and hatched thereon; that they also had wool, milk, eggs, underwood, furze, turnips, and the aftermath or second crop of clover, the tithes of which were due and payable to the plaintiff *Brown*, or the plaintiff *Bayley* his lessee; but that instead of paying, they had totally subtracted the same. The bill therefore prayed, that the defendants might be decreed to come to a just and fair account with the plaintiffs, or one of them, and satisfy them for all and every the tithes subtracted by them or either of them, or for the just value thereof.

The defendant *Butler* says, he occupies *Ricott Slade, Flatt Bean, and the Slip*; that there is a modus of 4s. 4d. payable at *Michaelmas* in lieu of all the tithes of *Ricott Slade*; that a piece of land called *the Parson's Piece* had been added to *the glebe lands*, in lieu of all tithes of the residue of his farms, excepting the tithes of corn, grain, and hay, which he had paid to the rector.

The defendant *Butler* admitted, that the plaintiff *Brown* had been, for five years past, rector of *Bletchington*, and that the rectory was a parsonage presentative with cure of souls; but denied that all the tithes, great and small, within the parish, had at all times belonged to the rectory, or that the plaintiffs ought to have been paid tithes in kind for all the titheable matters arising therein, particularly on the land called *Ricott Slade*, or *Rickett's Slade*, or on the rest of the farm and lands in his occupation. He said, that he had been nineteen years tenant to the *Annesley* family, and occupied a farm and lands in the said parish, known by the several names of *Flatt Bean, &c.* and *Ricott Slade*, and *the Slip*, adjoining thereto; that an ancient invariable sum of four shillings and fourpence had immemorially been paid by the owner or tenant for *Ricott Slade*, yearly, at the feast of *Saint Michael the Archangel*, to the rectors of the parish, in satisfaction of all tithes growing on the said ground; that with respect to the residue of the said farm and lands, the plaintiff *Bayley* had taken tithes in kind of corn, grain, and hay, during the time demanded by the bill; and that no tithe in kind, or other recompence or satisfaction in money, had been paid within the memory of man to the rector in respect of any other titheable matters which had arisen on the residue of the said farm and lands; but that many years ago, beyond the memory of man, upon an inclosure made of several parcels of lands in the said parish which had laid open and common, an addition was made to *the glebe land* of the parish by the owners of the lands inclosed, in satisfaction of all tithes, great and small, on the several lands in the parish, of which the residue of the farm and lands in his occupation was part; that the land so reputed to have been allotted to the rector on such account consisted of one parcel of inclosed ground, called *the Parson Piece*, containing forty acres; that the general reputation of the parish was, that in consequence of such addition made to *the glebe land* of the parish, the residue of the farm and lands in his occupation, and several other lands in the parish, had immemorially been held free and exempt from the payment of tithes, except for corn, grain, and hay; and he insisted, that as no tithe in kind, or other satisfaction in money, had been paid to the rector for the residue of the said farm and lands,

except

except for corn, grain, and hay, they were free and exempt, except for corn, grain, and hay, from the payment of any tithes to the rector.

Brown  
against  
Butler.

The defendant *A. Annesley* said, that the plaintiff was not entitled to any tithes whatsoever arising on *Ricott Slade*, or on *the Mill*; that he was owner of *Chickwell Mead*, and *Three Men's Mowth*, and *Rusby Piece*; that the sum of four shillings and fourpence (as mentioned in *Butler's* answer) had been time out of mind paid for *Ricott Slade* to the rector, in lieu of all tithes arising thereon; and that thirteen shillings and fourpence had, for the like time, been paid by the owner or tenant of *the Mill* at the time aforesaid; that the said sums had been accepted as *modus*es in lieu of all the tithes arising on *Ricott Slade* and *the Mill* respectively, until the death of the last incumbent; that he would have paid the same to the plaintiffs for the said three years, but that they would not accept the same: and he offered to pay the said *modus*es by his answer; and averred, that he had several receipts in his custody for the said ancient payments, which he set forth in his answer. The defendant further said, that no tithe in kind, or other recompence, had been paid, during the memory of man, to the rector for any titheable matters arising on *Chickwell Meadow* and *Three Men's Mowth*; that many years ago, beyond the memory of any man now living, the said forty acres of the inclosure were given to the rector as an exemption of the said lands and other lands in the parish; and that no tithe, or satisfaction in lieu thereof, had been paid since such inclosure; and, insisting that they are exempted from the payment of tithes, he set forth in his answer an abstract of the deed whereby he claimed such composition; but he said, that he believed that the said composition did not extend to the residue of the lands in the bill mentioned, which were late in the possession of the other defendants; and that he was willing that the plaintiffs should receive satisfaction for the tithe of all titheable matters (except corn, grain, and hay, for which satisfaction had been made), which arose on the residue of the said several farms within the said three years: and by his answer he offered the yearly sum of ten pounds for the lands in the defendant *Butler's* occupation, and two shillings for the tithes of the defendant *Snowfill's* lands; except for the tithes of corn, grain, and hay.

The defendant *Annesley* says, that he is owner of *Chickwell Mead*, *Three Men's Mowth*, *Rusby Piece*, and *the Mill*; that there is a *modus* of 13s. 4d. in lieu of the tithes of *the Mill*; and that the rector enjoys the *Parson's Piece* in lieu of the tithes, except of corn and hay of the other lands;

but that he holds other lands to which the exemption does not extend, and for the tithes of which he is ready to pay;

and tenders 10l. a-year for those in *Butler's* occupation, and 2s. a year for those in *Snowfill's*.

The defendant *Snowfill* said, that he occupied *Prickett Ground*, *Saint Foin Ground*, *the Horse Ground*, *Chickwell Meadow*, *Three Men's Mowth*, and *the Ham*; that no tithe had been paid during the memory of man for *Chickwell Meadow* and *Three Men's Mowth*; that they were exempted from tithes upon being inclosed, as before stated in the other answers; that he had therefore kept no account thereof; that the plaintiff *Bayley*

The defendant *Snowfill* says that he occupies *Prickett Ground*, *St. Foin Ground*, *the Horse Ground*, *Chickwell Meadow*, *Three Men's Mowth*, and *the Ham*.

*Ham*; that no tithes had ever been paid for *Chickwell Meadow* and *Three*



## DECREES IN TITHE CAUSES

**Brown  
against  
BUTLER.**

had taken the tithe in kind of the corn, grain, and hay arising on the residue of the said farm and lands; and that, in consequence of the aforesaid addition to *the glebe*, no other tithe was due. The defendant further stated, that he was in possession of a *water corn grist mill* in the said parish; and he insisted, that no tithe was due in kind for the same; but that a sum of thirteen shillings and fourpence had immemorially and invariably been paid in lieu thereof.

The plaintiff accepts the tender of 10l. and 2s. a-year.

By an order dated the ninth of *February* 1760, the plaintiffs were ordered to shew cause why they should not accept of the offer made by the defendant *Annesley* to pay the yearly sums of ten pounds and two shillings, as above-mentioned, in lieu of all tithes, except corn, grain, and hay, for the said lands, and *the Mill*, together with costs as to the said tithes; and the plaintiffs accepted the tenders upon the terms mentioned in the order: and by another order made the tenth of *June* last, the plaintiffs, on *Annesley* paying the said three yearly sums of ten pounds and the said sum of two shillings, with costs as aforesaid, were permitted to strike their demand thereof out of the bill.

The bill dismissed as to the demand of tithes for *Ricott's Slade*.

By another order made the twenty-first of *November* last, on behalf of the defendant *Godfrey* (the representative of the defendant *Butler*, deceased), it was ordered, that the original bill and bill of revivor, so far as the same related to the tithes of a close, called *Ricott Slade*, be dismissed with costs, unless cause were shewn to the contrary; and no cause being shewn against the said order, the same, as to the said demand, became absolutely dismissed out of this court with costs.

The plaintiffs replied to the answers of *Annesley* and *Snowfill*; and they rejoined, and witnesses were examined on both sides; and upon hearing counsel; and on debate of the matter;

The tithes of *Chickwell Meadow* and *Three Men's Moor* decreed.

THE COURT ordered *Snowfill* and *Annesley* to account for the value of the tithes arising on *Chickwell Meadow* and *Three Men's Moor* during the time demanded by the bill, with costs to be taxed by the deputy remembrancer (a).

(a) CHARLES TAYLOR, Esq. Deputy Remembrancer.

EASTER TERM  
1 GEO. 3.

ADAMS, D. D against WINDSOR.

*Shropshire*, 13th April 1761.

The rector of *Cunde*, in *Shropshire*, claims the tithes in kind of *Harnage Grange*, and states,

THE bill stated, that in the month of *April* 1755 the plaintiff was duly presented, instituted, and inducted into the rectory of *Cunde*, in the county of *Salop*, and was thereby entitled to all the great and small tithes yearly arising within the parish; that the defendant *Windsor* as the owner, and the defendant *Olivers* as the occupier of *Harnage Grange*, had for two years respectively



respectively occupied arable, pasture, and meadow ground in the parish; that *Olivers* had in one year fed and agisted several sheep on his said lands; that in another year both the defendants had several calves fallen; that they had in the said years depastured on their lands several oxen which had not been used for the plough in the parish; that they had several cows and heifers which during such agistment were dry and not used for the pail, but were grazed for fattening, or otherwise kept for sale, and disposed of as they thought proper; that all the said oxen, cows, and heifers were wholly unprofitable to him as rector of the parish, and produced no advantage to him whatever; that he was therefore entitled to the tithe of such agistment; that the several former rectors of the parish had successively, time out of mind, constantly received all the great and small tithes arising therein, or a yearly rent adequate to the full value thereof; and that the said rent had been from time to time, yearly or otherwise, varied as was agreed upon between the respective rectors and occupiers, according to the true values of the tithes. The bill further stated, that the defendant *Windsor*, during the said years, had occupied divers farms and lands out of the parish not titheable to the plaintiff, as well as the lands called *Harnage Grange*, and other titheable lands in the parish; that in order to perplex the plaintiff, and render it difficult for him to ascertain the number and the tithes of barren cattle agisted, he frequently in the said years removed his cattle from the parish of *Cunde* to the other lands by him occupied out of the said parish, brought them back again, sold some out and bought others in, and by such means rendered it impossible for the plaintiff to ascertain the *quantum* of his tithe for such agistment. The bill further stated, that the defendants had refused to set out or to pay their tithes, under pretence that all the grass was mowed; and he insisted, that the said grass land had been grazed by the defendant *Windsor's* barren cattle very far in the year, instead of preserving it, as he ought to have done, for hay; that afterwards, in the latter end of the year, the face of the ground was skimmed over; the rushes and coarse grass cut merely for the purpose of cleansing the grounds; that he then withered the same, and called it hay; that it was not worth one shilling; but that if the grass had been properly preserved for hay in the usual course of husbandry, the tithe thereof would have been worth ten pounds; and therefore, as such skimming of the ground was fraudulent, he was entitled to the tithe of the grass so eaten. The bill further stated, that the tenth calf in course as it falls was due to the plaintiff for tithe; that the same ought to be kept with the dam until weanable, unless the plaintiff desired the same sooner; that in the year 1757, *Windsor*, pursuant to his unjust pretence, caused notice to be given to the plaintiff's tithe-gatherer to fetch a tithe calf; that he then tendered to him a calf which was only seven days

ADAMS  
against  
WINDSOR.

that the defendants had agisted barren and unprofitable cattle on their lands;

that they had always paid tithes in kind, or a yearly rent in proportion to the value;

that they had adjacent lands in another parish;

and had fraudulently removed their cattle from one parish to the other, to conceal their tithes;

that they had fed their grass lands, and in the latter part of the season pretended to mow them;

that tithe calves are to be kept with their cows till weanable;

ADAMS  
against  
WINDSOR.

that the lands  
belonging to the  
monastery of  
*Byld* are not tithe  
free, the said  
monastery being  
one of the lesser  
abbies;

that no compo-  
sition had ever  
been made for  
the tithes of *Harnage Grange*.

The defendants  
say, that no  
tithes are due  
for *Harnage  
Grange*;

that the *Grange*  
belonged to the  
abbot of *Byld*;

old; that he refused to accept the same; that when it was fourteen days old, he contracted with a person to sell him the said calf; that he accordingly sent for it, but that the defendant refused to deliver it to him, unless he would pay him three shillings for the keeping of the said calf after such notice was given, which was but one week; and that he had refused to comply with such illegal demand. The bill further stated, that the monastery of *Byld* was one of the lesser abbies under two hundred pounds a-year; that it was, as such, dissolved by the statute 27. Hen. 8.; that if it should be proved to have been of the *Cistercian order*, which the plaintiff denied, and their lands, as such, exempt from tithes whilst the monastery subsisted, yet on the dissolution of the monastery the lands became liable to the payment of tithes; and he averred, that the rectors of *Cunde* had always claimed tithes in kind for *Harnage Grange*; that they had received the same before the dissolution; that if there had formerly been any composition, it could not bind succeeding rectors, the patron of the rectory not having been a party thereto; that no composition had ever been acquiesced in since the dissolution; that no rector had ever accepted twenty shillings in lieu of tithes; but that, on the contrary, every rector had constantly received tithes in kind, or a full adequate rent for the same; and that the said rent had been, from time to time, varied according to the yearly value of the tithes. The bill further stated, that both the defendants had, under pretence that there was such composition, refused to discover their titheable matters in the said *Grange*, although the defendant *Windsor* had purchased the estate subject to all tithes in kind, and had paid no consideration for the purchase of such tithes; and therefore he prayed, that the defendants might come to an account with him for the tithes of their several titheable matters and things which they respectively had on *Harnage Grange* for the said two years, and make him full satisfaction for the same.

The defendants admitted, that the plaintiff was rector of the parish, and entitled to all great and small tithes therein, except in respect of such lands there as were not liable to the payment of tithes in kind; and they insisted, that no tithes in kind of any sort whatever were due to him within the places in the bill mentioned; that all the meadow and pasture ground lying in the parish, and mentioned to be occupied by the defendants, was then, and for time beyond memory had been, parcel of a certain grange, called *Harnage Grange*, lying within the parish of *Cunde*; that for a long time before the making of the several statutes for the dissolution of monasteries, the abbot and convent of the monastery of *Byld*, which was one of the greater monasteries, were seised in fee simple of the said grange, as part of their possessions, and did not pay any tithe in kind  
whatever

whatever to the rector of *Cunde* in respect of the said grange, or any part of it, as appeared from an entry in the books kept in the registry of the *Bishop of Litchfield and Coventry* of certain monasteries that were exempt from tithes, and amongst which the monastery of *Byld* was particularly mentioned, as being of the *Cistercian order*; that the advowson of the church of *Cunde* formerly belonged to the *Earl of Arundel*; that the *Earl of Arundel*, in the twenty-eighth year of the reign of *Edward the Third*, being so seised of the said advowson, and the abbot and convent being seised of the manors of *Kinnerton*, *Rilton*, and *Stirelisle*, agreed to exchange the said manors for the said advowson; that the said king granted his writ of *ad quod damnum*, dated the eighth of *May*, in the twenty-eighth year of his reign, directed to the escheator of the said county on the said proposed exchange; that by an inquisition taken thereon it was found, that it would not be to the damage of the king, or of any others, if the king's licence should be given for such exchange; that accordingly such licence was granted, dated the twenty-sixth of *June* in the said year, as appeared by the record remaining in THE TOWER OF LONDON; that such exchange was made; that afterwards, in the reign of *Henry the Eighth*, the abbot and convent of the said monastery, which was of the *Cistercian order*, and *Mathew Ap David*, then rector of *Cunde*, by a deed of composition dated the twentieth of *November* 1527, setting forth, that divers controversies had been transacted between them about the possession and property, as well of the glebe lands of *Harnage Grange* as of the tithes great and small arising thereon, and that at length the same had been ended by the authority and consent of the *Bishop of Litchfield and Coventry*, ordinary of the place, and their founder, viz. that the said abbot and convent should for ever have the glebe lands of *Harnage Grange* aforesaid, and also all the great and small tithes arising thereon; that the rector and his successors for ever should have twenty shillings yearly from the said abbot and convent within six days after *Easter* yearly; and that they should administer all sacraments and sacred rights to the inhabitants of the said grange; that the seals of the said monastery and rector were put to the said deed; that the said bishop ratified the same, and caused the seal of his official to be put thereto on the third of *February* 1527, as by the same, remaining in the registry of the said bishop, appeared; that by indenture dated the tenth of *May*, in the twenty-fifth year of *Henry the Eighth*, the said abbot and convent demised the manor of *Harnage Grange* to *Richard Brereton* for sixty years, in which all tithes of the said grange were excepted and reserved to them; that such real composition is noticed therein; and that the payment of the said annual pension of twenty shillings appears by several entries in several accounts of the receivers of the revenues of the said late dissolved monastery, now remaining in the augmentation office; that in a suit in THE STAR CHAMBER

ADAMS  
against  
WINDSOR.

that the monastery of *Byld* was of the *Cistercian order*;

that the *Earl of Arundel* exchanged the advowson of *Cunde* with the abbot and convent for the manors of *Kinnerton*, *Rilton*, and *Stirelisle*;

that a composition was entered into between the rector of *Cunde* and the abbot, which was confirmed by the ordinary;

that the abbot and convent should hold *Harnage Grange* and the tithes thereof on paying the rector 20*l.* a year;



ADAMS  
against  
WINDSOR.

that the said  
Grange, on the  
dissolution of the  
monastery, be-  
came vested in  
Henry the Eighth;

that he exchange-  
d it with Lord  
Powys for the  
manor of Cot-  
tingham;

that Lord Powys  
conveyed the  
same to Fowler,  
and Fowler to  
the defendant  
Windsor.

before the dissolution of monasteries relating to the tithes of *Harnage Grange*, between the then rector of *Cunde*, claiming the said tithes, and the said abbot and convent, the right to the tithes of the said grange was decreed to belong to them; and that the said decree was taken notice of in the receiver's accounts in the augmentation office, but that the same could not be found; that on the dissolution of monasteries, the possession of the said monastery, and particularly of the tithes *Harnage Grange*, became vested in *Henry the Eighth*; that *Henry the Eighth* being so seised thereof, by his letters patent, dated the fourth of *July*, in the twenty-ninth year of his reign, granted the same, amongst other things, to *Lord Powys*, to hold to him in tail male *in capite*, at fifty-five pounds, eighteen shillings, and eightpence payable for the same; that the said king, by other letters patent, dated the thirty-first of *March*, in the twenty-seventh year of his reign, bargained and sold to the said *Lord Powys* the said yearly rent of fifty-five pounds, eighteen shillings, and eightpence, and also *Harnage Grange* and the tithes thereof, in exchange for the manor of *Cottingham*, in *Yorkshire*, granted to the said king by the said *Lord Powys*; that before the said grants were made, the receivers of the common revenue in their accounts particularly specified the tithes of the said grange, and accounted for the same; that after the making of the said grants, the said tithes were mentioned in the said accounts, but were not accounted for, as being granted to *Lord Powys*, as in the augmentation accounts remaining; that afterwards *Harnage Grange* and the tithes thereof became, by divers mesne conveyances, vested in the family of the *Fowlers*, of *Harnage Grange*; that the defendant *Windsor* purchased the said grange and tithes of *Sir William Fowler*, for a valuable consideration, by deeds of lease and release, dated the fourteenth and fifteenth of *November* 1739; that under the said grants they had received all the tithes of *Harnage Grange* to their own use, and had paid the said annual pension of twenty shillings to the rector; that no tithes in kind had ever been paid to, or received by any rector for the said grange till of late years; the defendant not being able to get the deeds, &c. from the *Fowler* family till the filing of the bill; that therefore, for the reasons aforesaid, the plaintiff had no right to any other payment or satisfaction for or in respect of the tithes of *Harnage Grange* than the payment of twenty shillings a-year: and he offered to pay the same for as many years as he was entitled to receive the same. The answer further stated, that they had not occupied any lands in the parish for which they had not paid all the tithes demanded from them in respect thereof, save such as were parcel of the *Grange*; and submitted, that they ought not to be compelled to make any discovery touching the tithes in kind arising thereon.

The

DURING THE REIGN OF GEORGE THE THIRD.

9

The plaintiff replied ; the defendant rejoined ; but no witnesses were examined on either side ; and upon hearing counsel ; and on reading a decree made by the court of augmentation of the revenues of the crown, dated the tenth of *May*, in the twenty-ninth year of *Henry the Eighth*, in a cause between *Steven*, late abbot of the monastery of *Byld*, plaintiff, and *Sir David Egerley*, clerk, parson of the parish church of *Cunde*, defendant, on a bill of complaint thereto exhibited in the court of star chamber, and sent into the court of augmentations, whereby it was ordered and decreed, that the said *Sir D. Agerley* should from thenceforth have and enjoy all the tithes yearly coming and growing of, in, and upon the said grange, called *Harnage Grange* ; and also on reading the answers ;

ADAMS  
against  
WINDSOR.

The evidence  
read.

IT WAS THIS DAY ORDERED, that the defendants do severally come to an account for the value of the several titheable matters and things which arose, renewed, or increased in and upon the said grange, called *Harnage Grange*, in the occupation of the defendants respectively, for, in, and during the said two years, being the time demanded by the bill ; and that they do satisfy and pay to the plaintiff what shall appear due on the account, with his costs to be taxed : further directions to be reserved till after the report.

The tithes of  
*Harnage Grange*  
decreed to be  
paid in kind.

KYNASTON against HATTERSLEY.

EASTER TERM  
1. GEO. 3.

*Middlesex*, 28th May 1761.

THE bill stated, that the plaintiff, for twenty-eight years past, had been seised in fee of the rectory impropriate of the parish of *Saint Botolph without Aldgate* ; that part thereof was in *London* or the liberties thereof, and other part in the suburbs of the said city, in the county of *Middlesex* ; that he, as impropriator thereof, was entitled to receive quarterly, for the time aforesaid, all tithes and rates for tithes, sums of money, customary payments, or other duties in lieu of tithes, and ecclesiastical duties, due by custom or common right, or some rate, composition, or satisfaction for the same, and all other dues and profits to the said rectory and parish church and the impropriation thereof for the time being belonging, and payable by the inhabitants, owners, and possessors of any houses, out-houses, shops, cellars, tollars, warehouses, lands, and grounds within the parish and the titheable places thereof, within the time aforesaid, as well in such parts of the parish as lie within the city of *London* and the suburbs of the said city as in such parts as lie within the county of *Middlesex* ;  
that

The impropriator of *St. Botolph without Aldgate*, in the county of *Middlesex*, claims 20s. a-year from the defendant, in lieu of tithes of a house in *East Smithfield*.



KYNASTON  
against  
HATTERSLEY.

that the defendant for seven years past, as well in his own right as in right of other persons whom he represented, had been an inhabitant, owner, lessee, and possessor of a dwelling-house, with the buildings and appurtenances thereto belonging, in *East Smithfield*, within the part of the parish which was in *Middlesex*, for which twenty shillings a-year were due in lieu of tithes; that the defendant and the former owners or occupiers thereof had immemorially theretofore paid to the plaintiff and his predecessors, or their lessees, twenty shillings yearly for the tithes of the said dwelling house, stable, and other buildings, or as an ancient composition for the tithes of the lands on which the said premises then stood, by yearly, half-yearly, and quarterly payments from *Christmas 1729* to *Lady Day 1752*, both inclusive; and that the said sums had been paid for the said premises from the year 1666; that the defendant ought to have paid the said annual payment in lieu of tithes for the said premises, according to custom time out of mind; that he had frequently applied to him for the same; but which he had refused to pay. The bill further stated, that there had been several bills filed in this court by the plaintiff's predecessors against the inhabitants and occupiers of houses and tenements within that part of the parish which was in *Middlesex*; and that they had been decreed to pay certain sums for the tithes thereof; and he prayed, that the defendant might be decreed to pay him for the tithes, duties, and profits, or the rate or composition in lieu of tithes by him owing for his said house, stable, and premises, during the time aforesaid.

The defendant says, that houses and other buildings are not titheable of common right; and that there is no custom, in that part of *St. Botolph* which lies in *Middlesex*, to pay the tithes demanded by the bill;

The defendant admitted, that the plaintiff claimed the rectory impropriate of the said parish; but denied that, to his knowledge, he was seised thereof in fee, or had any other estate of inheritance therein. He also admitted, that he was a lessee in possession of the house and building situate in that part of the parish of *Saint Botolph without Aldgate* which is in the county of *Middlesex*, and had been so during the time mentioned in the bill; and said, that soon after he entered on the premises the collector of the tithes for the impropriator came and demanded of him tithes or a payment after the rate of twenty shillings a-year in lieu thereof, alledging, that the same was payable to the impropriator for the said premises, by virtue of some custom; that he being a stranger had paid the same until the year 1752; but that since that year he had not paid the same, or any part thereof: and he insisted, that no tithes or rate for tithes, or money in lieu thereof, were due or payable for the said premises, for that no tithes were due for houses or other buildings of common right; and that no custom to pay such tithes prevailed within that part of the parish of *Saint Botolph without Aldgate* which lies in *Middlesex*. He also said, that

that the plaintiff, he believed, had exhibited his bill in chancery in the year 1747 against *Henry Willoughby* and others, occupiers of houses within the said parish, setting forth, amongst other things, that the defendants ought to have paid the plaintiff one shilling out of every ten shillings, and two shillings out of every twenty shillings yearly, and so in like proportion for every tenement above the rent of twenty shillings, ascending from ten shillings to ten shillings, according to ancient custom time out of mind used in that part of the parish and rectory which lies in *Middlesex*; that the said defendants denied the custom; that on the hearing of the cause, an issue was directed to try the same; that the plaintiff declined proceeding to trial; and that his bill was afterwards dismissed with costs; that the plaintiff, he believed, had commenced several other suits against several of the inhabitants, and had thereby intimidated them to pay what he demanded for tithes, and had frequently given receipts in an unfair manner; and he further insisted, that no tithes were due for the premises occupied by him, not only for the reasons aforesaid, but because the ground and soil of the said premises, and other parts of the said parish, were, at the dissolution of monasteries, in the thirty first year of *Henry the Eighth*, part of the possessions of the abbey or monastery of *Grace*, dissolved by the statute 31. *Hen. 8. c. 13.*; that the said monastery was one of the greater monasteries, and of the yearly value of two hundred pounds; that the same was discharged from the payment of tithes in respect of the lands belonging to it; and that the lands in the said parish were discharged of tithes. He denied that he knew of any decree or proceedings in this court between the impropiators and inhabitants of the parish; but said, that if any decree had been made, the same was obtained by collusion, and that he, the defendant, was not bound thereby.

KYNASTON  
against  
HATTERSLEY.

and that if there is, the ground on which his premises stand was parcel of the possessions of the monastery of *Grace*, and so tithe free.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel; and reading an indenture tripartite, dated the twelfth of *June* 1728, signed *J. Raymond* and others; the answer, and the schedule annexed to it; the depositions of *Thomas Yewda*, which was objected to by the defendant's counsel; his cross examination to the first part of the fifth interrogatory as to other matters in the said fifth interrogatory, when the objection was overruled; the tithe book of the collectors referred to by his deposition, which was objected to, and the objection over-ruled; the deposition of *F. Phipps*; and several entries in the tithing book for that part of the parish of *Saint Botolph's, Aldgate*, situate in the county of *Middlesex*, from 1673 to 1753; decrees in this court in *Easter Term*, the seventh of *May*, and *Trinity Term*, the fifth of *July*, in the sixth year of *William and Mary*, between  
Umfreville

The evidence read.

KYNASTON  
against  
HATTERLEY.

*Umsfreville v. Topping* (a); a decree in *Michaelmas Term*, the twenty-sixth of *November*, in the same year, *Umsfreville v. Campion* (b); a decree, the thirteenth of *February*, in the fourteenth and fifteenth years of *Charles the Second*, *Reynell v. Coppin*; and upon full debate;

The tithes demanded by the bill decreed.

THE COURT ordered the defendant to account to the plaintiff for the said sum of twenty shillings yearly demanded by the bill during the time aforesaid; and also pay him his costs of suit when taxed.

(a) The case of *Umsfreville v. Topping* and others came before the Court on the seventh of *May* 1694. *Easter Term*, 6. Will. & Mary. The bill demanded tithes, or customary payments in lieu thereof, for certain premises in the possession of the defendants in that part of the parish of *Saint Botolph without Aldgate* as lies in the county of *Middlesex*. To which bill the defendants answered, and the plaintiff, by a special replication, relinquished all tithes and dues antecedent to the thirteenth of *September* 1688; the defendants rejoined; and witnesses were examined; and upon reading the depositions, and the ancient tithe books of the parish, THE COURT decreed the defendants *Topping* and *Hart* to pay two shillings and sixpence a quarter in lieu of the tithes of their houses, and also *Easter* offerings for themselves and their families; the defendants *Davenport* and *Webb* to pay two shillings a quarter; the defendant *Jones* one pound five shillings a quarter for his house in *King Harry Yard*; and as to the defendant *Middleton*, the Court directed an issue to try, before the Chief Baron and a special jury, "Whether there is a *modus* of " twenty shillings a-year, or another

" *modus* of twenty pounds a-year, or  
" any and what other *modus* or *modus*es  
" exceeding twenty shillings a year for  
" the houses called *Hooker's Rents*, of  
" which the defendant's house was  
" one, on the north side of *Sun Yard*;" and that if upon the trial the jury should find that there is no other *modus* than twenty shillings a-year for *Hooker's Rents*, the Court will consider of costs for the defendant *Middleton* for the said trial. The cause came on to be further heard on the fourteenth of *May* 1694, when the deputy was ordered to take an account as against the defendants *Gresse*, *Ratcliffe*, *Holbeck*, *Turner*, *Herne*, *Cbetwyn*, *Kendal*, *Smith*, and others, according to the different rates mentioned for their several tenements in the parish. On the twenty-second of *May* 1694, a decree nisi against *Holbeck*, *Turner*, *Kendal*, and *Cbetwyn* was made absolute; and on the fifth of *July* following, the deputy's report was ratified and confirmed. But it does not appear from the Book of Decrees and Orders, that any proceedings were had upon the issue.

(b) See vol i. page 329.

TRIN. TERM,  
1. GEO. 3.

KYNASTON against BRECKNOCK.

London, 8th June 1761.

The impropriator of *St. Botolph without Aldgate* demands the tithes of two houses in the *Minories*, of one house in *Higb Street*, and of another house abutting on the *Minories*, according to the rates decreed by the statute 27 Hen. 8. c. 21.

THE bill stated, as in the former cause, that the plaintiff was impropriator of *Saint Botolph without Aldgate, &c.*; that, as such, he was entitled, according to the statute and decree made in the thirty-seventh year of *Henry the Eighth*, to one shilling and fourpence halfpenny out of every ten shillings yearly rent of the premises and buildings in that part of the parish which lies within the city of *London*, and to two shillings and ninepence out of every twenty shillings yearly rent, and so in proportion for every tenement above the said rent, payable quarterly; that the defendants had, in right of themselves and other persons whom they



they represented, been inhabitants, lessees, owners, occupiers, and possessors of several houses, warehouses, shops, cellars, follars, stables, and grounds in the city of *London* and the said rectory; that they, as owners, lessees, and occupiers, had paid considerable fines for the renewal of the leases, and ought to have paid to him the tithes, rates, and customary payments by them respectively payable, in lieu or in the name of tithes, for their respective houses and other tenements, either according to immemorial custom, or else according to their several compositions or agreements, or according to the said decree; but that they had refused to discover the same, or to pay to him his just and legal dues.

KYNASTON  
against  
BRECKNOCK.

The defendants *Dyer* and *Gurry* admitted that the plaintiff was seised of the rectory; and that they, as lessees, possessed and occupied certain tenements, &c. in *the Minories*, in *London*.

The defendants  
*Dyer* and *Gurry*  
admit that they  
possess the two  
houses in *the*  
*Minories*.

The defendant *Brecknock* denied that the plaintiff was, to his knowledge, seised in fee of the rectory, or that he was of common right, by custom, or by the said decree, entitled to tithes, or customary payments in lieu thereof; and said, that he had been owner and possessor of a dwelling-house and shop in *the Minories* and in *High Street*; that in lieu of the tithes of the said premises, a *modus* of thirteen shillings and fourpence a-year was payable; and he insisted on the same in bar of the plaintiff's demands, according to the rates specified in the decree.

The defendant  
*Brecknock* pleads  
a *modus* of 13s.  
4d. for the houses  
in *the High Street*  
and that abutting  
on *the Minories*.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel for the plaintiff and the defendant *Brecknock*; and no counsel appearing for the defendants *Grace*, *Dyer*, or *Gurry*; and reading several depositions; an indenture tripartite of bargain and sale inrolled in chancery, dated the twelfth of *June* 1728, from *J. Raymond* and others of the rectory of *Aldgate* to the plaintiff in fee; the tithing books from 1721 to 1755; and on debate of the matter;

The evidence  
read.

THE COURT ordered *Brecknock* to pay to the plaintiff the annual sum of thirteen shillings and fourpence for his house and appurtenances situate in *High Street*, in the parish of *Saint Botolph*, *Aldgate*, and fifteen shillings for one other house occupied by him abutting on *the Minories* during the time demanded by the bill, with costs.

The *modus* of  
13s. 4d. esta-  
blished, and 15s.  
a-year decreed  
to be paid for  
the other house.

THE COURT also made a decree *nisi* as to the other defendants; and no counsel appearing for them, the said decree was, on the twenty-fifth of *January* 1762, made absolute; and on the sixteenth of *July* 1762, the deputy's report was confirmed, and the said defendants ordered to pay the several sums reported due, with subsequent costs.

The other de-  
fendants decreed  
to pay according  
to the statute.

BARRETT



TRIN. TERM,  
1. GEO. 3.

BARRETT *against* FILMER.

*Hertfordshire, 17th June 1761.*

The vicar of *Ickleford cum Pirton*, in *Hertfordshire*, is entitled to the tithes of hay, and to all small tithes and *Easter* offerings arising on the manor of *Pirton*.

THE vicar of the parish and parish church of *Ickleford cum Pirton*, otherwise *Pirton cum Ickleford*, in the county of *Hertford*, claimed all small tithes arising therein; and stated, that the defendant *Filmer* had, ever since the plaintiff's institution in the year 1758, been owner of the manor, and improPRIATOR of the rectory of *Pirton cum Ickleford*, and had, as improPRIATOR, claimed and received during the said time, not only the tithe of hay, but other small tithes, which were of right due to the vicar; that the defendant *Arnold* during the said time had occupied a messuage, orchards, gardens and lands in the parish, and had yearly thereon hay, milk, wool, eggs, pigs, hops, coppice wood, pears, apples, and other fruits, lambs, calves, and other titheable matters, the tithes of which he ought to have paid to the plaintiff, as well as his *Easter* offerings; but which he had, under various pretences, withheld, and refused to pay. The bill therefore prayed, that the defendants might be decreed to account with the plaintiff for tithe hay, and all other small tithes, oblations, and *Easter* offerings, which had been withheld by them since the plaintiff's institution and induction, and satisfy the plaintiff for the same; and that the plaintiff's right to the said tithes in kind might be established.

The defendant *Filmer* admitted, that the plaintiff was vicar of the parish, and by virtue thereof entitled to the *small tithes* arising therein, or to some composition in lieu thereof, and likewise to *Easter offerings*; but he denied that he was entitled to tithe hay; and, on the contrary, insisted, that such tithe hay belonged to him as improPRIATOR of the rectory, and of course that it ought of common right to be received by him or his lessee.

The defendant *Arnold* also admitted, that the plaintiff was vicar of the parish, and entitled to the *small tithes*, or to some composition in lieu thereof; but not that he was entitled to *Easter offerings*, for that he and his family had resided in the parish upwards of twenty years, and that during all that time no demand had ever been made of him, nor had he ever paid anything for *Easter offerings*: and he insisted, that the plaintiff, as vicar, was not entitled to tithe hay within the manor and rectory of *Pirton*, or to any composition in lieu thereof; but that, on the contrary, he, as lessee under the defendant *Filmer*, was entitled to the same. He said, that he was in possession of the said manor and rectory, with the *demesne lands* thereto belonging; that the same consisted of a messuage, malt-house, and other buildings, with arable and pasture grounds; and that if the Court should be of opinion that the plaintiff was entitled

to

to the tithe of hay as vicar, he was willing to account for what had arisen on his lands as the Court should direct, or to pay him a composition of fifty shillings a year, as he had paid the former vicar, and all the arrears thereof; and he averred, that the said sum was the full value of the same.

BARRETT  
against  
FILMER.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and on reading the proofs taken in the cause; the exemplification of a decree of this court made in the cause of *J. Savage, Clerk, v. J. White*, in *Michaelmas Term*, in the twenty-sixth year of *Charles the Second* (a); and on debate of the matter;

THE COURT ordered the plaintiff's right to the tithe hay and other tithes demanded by his bill to be established; and, by consent of both parties, the defendant *Arnold* to pay to the plaintiff ten pounds in lieu of the several species of tithes demanded by the bill, together with his costs.

(a) The case of *Savage v. White* and others came before the Court on the twelfth of June 1673. The plaintiff, as vicar of the parish-churches of *Ickleford* and *Pirton*, in *Hertfordshire*, filed his bill to discover and enforce the payment of the several small tithes which the defendants had withheld during the two preceding years. The defendant *White* set forth the several titheable matters which he had had in the parish of *Pirton*; denied that he had any in the parish of *Ickleford*; and insisted, that the tithes arising in *Pirton* belonged to him as lord of the manor, and impropiator of the rectory of *Pirton*; that the said manor and rectory, and all the tithes thereof, had been formerly parcel of the possessions of the priory of the *Blessed Mary*, in *Hertford*; that they came to the crown, on the dissolution of the priory, by virtue of the statute 27. Hen. 8.; that *Henry the Eighth* granted the same to *A. Denny* and *J. Champernoone*; and that the same had, by several mesne conveyances, been conveyed from them to him; and that the endowment of the said vicarage made no mention of any small or other tithes, or of any composition in lieu thereof, to be paid out of *Pirton* to the vicar of *Ickleford cum Pirton*; but he admitted, that the plaintiff was entitled to *Easter* offerings. The

Court, on reading the proofs, and on much debate, directed an issue to try, "Whether any small tithes arising in *Pirton*, or any customary payments in lieu thereof, are due to the plaintiff;" and on the trial, the jury found a verdict for the plaintiff. The defendant applied for a new trial; but on Mr. Justice *Twisden* certifying that he did not disapprove of the former verdict, a new trial was refused; and, on the twentieth of *November* 1673, the Court ordered the defendant *White* to pay two pounds, seven shillings, and sixpence, as the value of the small tithes withheld by him and the other defendants from the plaintiff; the tithe of hay being among the tithes so withheld. On the tenth of *February* 1675, another bill which *Savage* had filed against *White* for the small tithes of the parish of *Pirton* came on to be heard, and another issue precisely similar was, on the defendant's promising to pay full costs both at law and in equity if the verdict was against him, ordered to be tried; but a treaty took place between the parties before trial; and on the twenty-third of *November* 1676, the Court ordered, that the agreement should stand and remain in full force, and be duly performed by each party.

MICH. TERM,  
2. GEO. 3.

PULTENEY *against* UTTERMAN.

*Somersetshire, 8th December 1761.*

The rector of *Curry Mallet*, in *Somersetshire*, claims the tithes of *Park Farm* in kind.

THE rector of *Curry Mallet*, in the county of *Somerset*, claimed the great and small tithes, particularly the tithes of wool and lambs, the agistment tithes for all barren and unprofitable cattle, hay, milk, calves, gardens, offerings, oblations, and other dues arising in the parish; and stated, that the defendant had, ever since *Easter* 1744, occupied a farm called *Park Farm*, with the gardens, orchards, or lands thereto belonging; that the tithes accruing thereon ought to have been set out and paid in kind; that no *modus* or customary payments extend to the said farm, or to any of the lands thereto belonging; that at the time he took possession of the said farm, he concealed all the tithes, and the number of sheep and other cattle which had been sold or depastured by his father; and that he had cut and lopped large quantities of hedge-wood, pollard trees, or maiden trees under twenty years growth, and sold the same, without paying the tithes in kind thereof to the plaintiff. The bill therefore prayed, that the defendant might account for the said tithes.

The defendant says, that the tithes of corn ought to be paid in kind; of grafs in the first cock; of fruit when gathered;

that the tenth of  
2s. a week for oxen, and of 8d. a week for heifers, is due, in lieu of agistment tithes;  
1d. a sheep, in lieu of tithe wool;  
2d. a cow, in lieu of tithe milk;  
1d. a calf, or if killed the left shoulder;  
4d. a colt;  
1d. a garden; and 2d. *Easter* offerings;  
½d. for every lamb under seven; and one lamb in ten, paying ½d. for every lamb deficient on *Saint Mark's Day*;

The defendant admitted that the plaintiff was rector of the parish, but left him to prove his right to the tithes thereof; and said, that since the month of *April* 1744 he had occupied *Park Farm*; that by the custom of the parish, the tithes of wheat and other corn and grain ought to be paid in kind; the tithes of all grafs cut in kind, when first put into cocks; of all pears, apples, and plumbs, in kind, at the time of gathering them; the tenth part of the agistment of barren and unprofitable cattle; the tenth part of one shilling a week for agisting every ox and gate, and of eightpence for every heifer; that one penny is due to the rector for each sheep kept and shorn, in lieu of tithe wool; twopence for every milch cow, in lieu of tithe milk; one penny for every calf reared, and if sold, the tenth part of the money it sold for, and if killed by the owner, the left shoulder; fourpence for every colt reared; one penny for a garden, and all therein growing; and twopence for every person above sixteen years old for *Easter* offerings; the said payments are to be made at *Easter*, or as soon after as demanded; that the ancient method of paying tithe of lambs fallen was, if under the number of seven, one halfpenny for each lamb; that if there are seven or more, and under ten, then the owner is to take two lambs, and the rector such lamb of the



residue as he will elect, and pay to the owner one halfpenny for every deficient lamb from seven to ten; that if there are ten lambs, the owner is first to take two, and then the rest one; and that the said tithe ought to be rendered at *Saint Mark's Day*; that nothing was due in lieu of the tithe wool growing from *Saint Mark's Day* till *sheering time*, the tithe lamb being esteemed a full satisfaction for the same. He denied that he had refused to discover the number of his cattle, or the quantities of his other titheable things by him had since *Easter 1744*; or that he had endeavoured to induce the plaintiff to accept of less than what was due to him, or that he had concealed the number of sheep and lambs shorn in each year: and he set forth the same and the tithing thereof, and said, that he had offered to pay the plaintiff what was due, which he had refused to accept. But he further said, that if the Court should be of opinion that the plaintiff was entitled to the tithes of lambs' wool grown between *Saint Mark's Day*, when the said lambs were tithed, and the time of shearing, or to the tithe of the wool of lambs not depastured above three or four days before they were sheared, and to the tithe of grafs cut to feed his sick bullocks with, he submitted to pay the same with costs in respect to such part thereof as was not included in his tenders. He also denied that he had cut or lopped any maiden trees or pollards under twenty years growth, or that he had cut hedge-rows or other wood, save only for the use of his family; his dairy; and for repairing the fences of the said farm; and some thorns; and he submitted whether any tithe was due for the same.

PULTENEY  
against  
UTTERMAN.

that no tithe is due for wool grown between *St. Mark's Day* and *shearing day*;

that he had tendered what was justly due;

that no tithes is due for grafs cut to feed sick cattle with;

that no tithes is due for wool used on the farm.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel; and reading the bill, answer, and proofs taken in the cause; and on debate of the matter;

The evidence read.

THE COURT declared, that the wool of lambs shorn at *Midsummer* in the parish of *Curry Mallet* and the titheable places thereof, after the tithe of lambs had been paid at *Saint Mark's Day*, is titheable; and ordered the defendant to account with the plaintiff for the several species of tithes demanded by the bill.

The tithes of the wool of lambs decreed;

THE COURT also ordered the deputy to examine and state, whether any and what tenders had been made by the defendant to the plaintiff, and the times when the same were respectively made, and make returns of what was due from the defendant to the plaintiff for tithes at the respective times of

and the defendant ordered to account.



PULTENEY  
against  
UTTERMAN.

such tenders. The costs and further directions to be reserved till after the report (a).

(a) The defendant *Utterman* purchased *Park Farm* of the Earl of *Peterborough* in the year 1708. In the year 1713, *Cockburne*, the then rector of the parish, filed his bill against him in this court for the great and small tithes of the farm from the time of his purchase. The defendant said, that he had set out the tithes of his wheat, barley, oats, pease, beans, and vetches, for the said years in kind; that the plaintiff had taken them away; that the tithes were worth three shillings an acre; that he had made the plaintiff a satisfaction for the tithes of the grass he had mowed; that there was a *modus* of twopence a cow or heifer in lieu of tithe milk; of three shillings and fourpence, in lieu of the tithe wool and pasturage of sheep; of three shillings for every tenth lamb; of one penny for every calf bred; the tenth of the value of every calf sold; the left shoulder of every calf killed for the use of the family; one penny for a garden; fourpence for *Easter* offerings for himself and family, he then having no child or apprentice above fourteen years of age; and the tithes of apples and pears in kind; but he insisted, that no tithes in kind ought to be paid for any matter or thing arising on the said *Park*, or had, in the memory of man, been paid or demanded for the same; for that former rectors had immemo-

rially, as and for a *modus* in full satisfaction of all tithes great and small arising on the said *Park Farm*, a horse-lease yearly in the said *Park Farm*, or some composition in lieu of such horse lease; that the usual composition for such horse lease was, for many years together, four pounds, ten shillings a-year; and that he had tendered the said four pounds, ten shillings every year. The Court directed an issue to try the *modus* as to the horse lease in lieu of all tithes arising on *Park Farm*; and the plaintiff agreed not to put his horse into the grounds in question until the matter should be determined; but it does not appear that any further proceedings were had in the cause. In the year 1715, *Cockburne*, the rector of the parish, died, and one *Gratwick* was, in the same year, promoted to the rectory. *Gratwick* died in the year 1735; and, on the nineteenth of June 1738, a bill was filed against *Utterman*, by the sister and executrix of *Gratwick*, stating, that the defendant had, in the year 1717, agreed to pay her brother eight pounds a year, in lieu of the tithes of *Park Farm*, for eight years; but that, from the expiration of the said term until her brother's death, he had held the said farm without setting out or paying any tithes for the same. And the Court directed the tithes to be paid as demanded by the bill.

HILARY TERM  
2. GEO. 3.

HILL against BRANSON.

*Somersetshire*, 4th February 1762.

The vicar of *Bedminster*, in *Somersetshire*, claims all the small tithes, except of milk, in kind, and particularly the tithes of hay, and of agisting and depasturing barren and unprofitable cattle.

THE bill stated, that the defendant *Broughton* was, about Michaelmas 1744, appointed prebendary of *Bedminster* and *Redcliffe*, in the county of *Somerset*; that he had been instituted and inducted into the said church and vicarage; and that he still continued vicar thereof, and had thereby become entitled to all vicarial tithes arising therein, and in the titheable places thereof; that by lease dated 1750 he demised to the plaintiff, his executors, &c. all the vicarial tithes and agistments payable by the inhabitants and occupiers of lands, tenements, and hereditaments, in the parish of *Bedminster* and the titheable places thereof, which were due or of right belonged to him as vicar thereof, either by ancient tenure, agreement, composition, or otherwise, to hold for fourteen years, at thirty pounds a-year; that by virtue of the said lease, the plaintiff was become well

well entitled to tithes in kind for calves, lambs, colts, pigs, geese, turkeys, ducks, chickens, wool, hemp, flax, honey, wax, hops, wood, green pease, and green beans, potatoes, all sorts of garden stuff, fruits, willow twigs, faggots, the agistment tithe of all manner of barren and other unprofitable cattle, and other vicarial tithes, except *cow white*, viz. one shilling for every ten shillings of such agistment, or two shillings in the pound, unless any composition or agreement was made in lieu thereof; that the defendant *Branfon* had been, from *Lady Day* 1752, owner and occupier of several farms of arable and pasture lands within the said parish; that he had, during the said time, kept thereon a number of calves, and great flocks of sheep, which had yielded large quantities of wool and lambs; that he had also yearly kept fows, pigs, geese, ducks, hens, turkeys, and other poultry, and had likewise had apples and other sorts of fruit, and hops, bees wax, honey, pease, beans, and other garden stuff, and also hemp and flax; that he had also, during the said time, fed on his said lands horses and mares, and had bred a number of horses and colts, and fed and grazed thereon sundry dry, barren, and unprofitable cattle of his own; that he had also agisted and taken into pasture several others of the like sort for hire; and had several other titheable matters and things; the tithes of which he ought regularly to have paid to the plaintiff, but which he had refused to do, and pretended that a *modus* was payable in lieu of the said tithes. The bill therefore prayed, that the defendant *Branfon* might be decreed to pay to the plaintiff the tithes due and in arrear, or make him a reasonable satisfaction for the value thereof, and also the future tithes, as the same shall become due; and that an injunction should issue to stay the defendant from further proceeding at law against him.

HILL  
against  
BRANSON.

The defendant *Branfon* admitted, that *Broughton* was prebend of *Bedminster* and *Redcliffe*, and that he had granted a lease of the tithes thereof to the plaintiff; but he denied that he was entitled to the several tithes as stated in the bill, and particularly to the tithes of agistment; for that all the time that he had occupied lands in the said parish, he had been an inhabitant thereof, and by the custom of the parish the tithes of agistment were only payable by strangers who rented grounds therein, and not by the inhabitants thereof; and that there was, and had been immemorially, except in the tithery of *Knowle* (a), a *modus* of four pounds and elevenpence payable by the proprietors of meadow and pasture grounds, or their farmers, in the parish (except for the prebendal lands and the pasture grounds in *Knowle* tithing), to the prebendary, on *Michaelmas Day* yearly, in lieu of the tithe hay (b) and agistment tithe of all such meadow and pasture grounds: and after setting forth a particular of the

The defendant *Branfon* says, that by the custom of the parish no tithes are payable for agistment, except by strangers who rent land in the parish; that there is a *modus* of 4l. 6s. 11d. payable on *Michaelmas Day*, except in the tithery of *Knowle*, by inhabitants, in lieu of tithe hay and pasture;

(a) See *Cox v. Livesey*, vol. i. page 152.

(b) See *Horton v. Higginbottom*, vol. i. page 424.

*HILL*  
against  
*BRANSON.*  
and that no tithe  
is at any rate  
due for *after*  
*pasture* ;  
and that 4d. a  
cow is payable  
in lieu of tithe  
milk.

grounds occupied by him in the parish, he insisted, that if there had not been such a *modus*, yet that no tithes are by law payable for the *after grass*, or the agistment of dry and unprofitable cattle fed on the grounds he had mowed. He also said, that on a trial at law on an issue directed out of this court in the cause of *Gibb v. Goodman* (a), for tithe milk in kind, the defendants proved a *modus* of fourpence for every cow, called *cow white*, and obtained a verdict for such *modus* : and he set forth a terrier made by *Gibb* touching the tithes of the parish, and also the quantities, qualities, and values of the titheable matters he had on his said lands.

The defendant  
*Broughton* says,  
that he is vicar,  
and had given the  
plaintiff a lease  
of the tithes.

The defendant *Broughton* said, that he was appointed prebend as aforesaid in *October* 1744 ; that in *November* following he was instituted into the said vicarage ; that he had duly executed a lease, dated the fifth of *December* 1750, to the plaintiff, and had thereby demised to him all the vicarial tithes and agistments arising in the parishes, and due to him as vicar thereof.

The evidence  
read.

The plaintiff replied to the defendant *Branston's* answer ; and the defendant rejoined ; and witnesses were examined on both sides ; and upon hearing counsel on both sides ; and reading a decree made the twenty-sixth of *November*, in the thirty-fifth year of *Charles the Second*, in the cause of *Thomson v. Wright* (b) ; the answer of the defendant *Branston* ; and a lease to the said plaintiff from *Broughton*, dated the fifth of *December* 1750 ; another decree in this court, dated the twentieth of *May* 1734 (c) ; several depositions ; and exhibits, being receipts, &c. ; and upon debate of the matter ;

The defendant  
ordered to ac-  
count for his  
tithes in kind.

THE COURT ordered the deputy remembrancer to take an account of what was due to the plaintiff from *Branston* for the several titheable matters and things demanded by the bill ; *Branston* to pay the plaintiff his costs of suit ; the injunction formerly granted in this cause to be made perpetual ; and the costs and further directions to be reserved until after the report was made.

(a) Vol. ii. page 346.  
(b) See vol. i. page 221.

(c) See vol. ii. *Gibbs v. Goodman*,  
page 346.

HILARY TERM  
2. GEO. 3.

EVANS against GWILLIM.

Herefordshire, 8th February 1762.

The vicar of  
*Lugwardine*,  
with the cha-  
pelry of *St. Woonard's*  
annexed,  
in *Herefordshire*, is

THE bill stated, that *J. Evans*, clerk, deceased, was in his life-time, for three years, vicar of *Lugwardine*, with several chapelries, and particularly the chapelry of *Saint Woonard's*, thereto annexed, in the county of *Hereford* ; that by virtue of a decree in this court, the said vicar is entitled to the tithes of *Prior's Wood*, in the said chapelry of *St. Woonard's*.  
thereof,



EVANS  
against  
GWILLIM.

thereof, and of some ancient endowment or prescription, he was entitled to all vicarial tithes, particularly to the tithes of wood and underwood, yearly arising therein; that he being so entitled, and having for several years employed the plaintiff *Thomas Evans* as his curate of *Saint Weonard's*, agreed that he should have and receive to his own use, for his care and performance of the cure there, the vicarial tithes, and also the tithes of all wood and underwood arising within the said chapelry; that the defendant, during that time, was owner, or in possession of a wood called *Pryor's Wood*; that he had cut divers quantities of wood and underwood during the said time, and had taken and converted the tithe thereof to his own use; that the said *J. Evans* the vicar, after having made his will, died, and left his wife and *T. Willin* executors thereof; that they proved the same, and afterwards died intestate; that the plaintiff *J. Evans* had sued out letters of administration, &c.; and that he was thereby entitled to the said tithes of wood and underwood in trust for the said other plaintiff *T. Evans*; but that after several applications to the defendant he had refused to pay or to account for the said tithes. The bill therefore prayed, that the defendant might come to an account for the value of the said tithes, and make satisfaction for the same.

The defendant admitted, that *J. Evans*, deceased, was vicar of the parish and the chapelries; that the plaintiff *T. Evans* acted as curate to him, &c.; that during the said time he had been owner and occupier of *Pryor's Wood*, or *Pryor's Grove*; that in the said years he had cut divers quantities of wood and underwood, and sold and disposed thereof to his own use, without paying any tithes for the same; and he set forth the quantities of wood and bark which he sold, and to whom, and what he had received for the same; and insisted, that he had a right so to do, for that *Pryor's Wood* was exempt from the payment of tithe; and that neither he nor his ancestors, nor the former owners or occupiers of the said wood, had paid any tithes for the same to the vicar of *Lugwardine*, or to the curate of *Saint Weonard's*; that the manor of *Monkton*, otherwise *Monckton*, and *Lanwarren*, otherwise *Mounton*, and *Lanwan* with its appurtenances, in the county of *Hereford*, together with all tithes arising in and upon the *Demefnes* of the said manor, were heretofore parcel of the priory of *Llantony*, near *Gloucester*; that the said priory was of the value of six hundred pounds a-year; that the said manor, tithes, and premises, were surrendered to *Henry the Eighth*; that at the time of the dissolution of the said monastery, the prior of *Llantony* was seised of the said manor and tithes in his *demefne as of fee*, in right of his convent, or otherwise held the said manor and demefnes thereof discharged of tithes, either by composition, bull of the pope, order, prescription, or unity of possession of the said parsonage of *Lugwardine* and



EVANS  
against  
GWILLIM.

*Pryor's Wood*, time out of mind, some or one of them ; that afterwards, by 31. *Hen. 8 c. 13.* it was enacted, " that all those " who should have any manors or lands which belonged thence- " fore to the dissolved monasteries, and were by them held dis- " charged of tithes, should hold the same also discharged of tithes " as amply as the abbots and priors held the same at the time " of the dissolution of the said monasteries ; " that the said manor and tithes continued in the hands of THE CROWN until *Edward the Sixth* granted to *W. Breton* and *T. Brown*, and their heirs, all that his said manor of *Monkton*, &c. with the appurtenances, and all the tithes arising on the *Demesnes* of the said manor ; that they thereupon entered on the said manor, and became seised thereof, and of the said tithes, in their *demesne as of fee* ; that *Pryor's Wood*, during the years aforesaid, was parcel of the *Demesnes* of the said manor of *Monkton*, and was, at the time of the dissolution of the said monastery, in the tenure of *J. Mynors*, and held by him of the said prior and convent by rent, service, heriot, and suit of court of the said manor ; and that the same, by mesne conveyances and descent, was now become vested in him ; that under such grant and conveyances or by virtue of the said act of parliament, the said premises being held by the said prior and convent discharged from tithes at the time of the dissolution, the said wood was not liable to the payment of tithe during the time demanded by the bill, but was exempt therefrom : and he insisted, that he ought not to be compelled to pay the plaintiffs, or either of them, the tender he had made of twenty pounds, as he was not, at the time he made the said tender, fully apprised of the evidence of his right to the said tithes, and they had refused the said tender.

The plaintiffs replied ; the defendants rejoined ; and witnesses were examined on both sides ; and upon hearing counsel for all parties ; and reading several depositions and receipts ; the ministers accounts of the possessions of the priory of *Llanthony juxta Gloucester*, in the thirty-first year of *Henry the Eighth* ; a grant from *Edward the Sixth* to *T. Brown* and *W. Breton*, dated the twenty-fifth of *March*, in the seventh year of his reign, of, amongst other things, the grove and wood called *Pryor's Field*, in the parish of *Saint Weonard's*, lately belonging to the priory of *Llanthony* ; and on full debate of the matter ; the cause was ordered to stand over for the opinion of the court ; and now standing in the paper accordingly ;

THE COURT declared, that the plaintiff *J. Evans*, clerk, as administrator with the will annexed of *J. Evans*, clerk, the elder, deceased, late vicar of *Lugwardine*, is entitled to the tithes of the wood called *Pryor's Wood*, within the chapelry of *Saint Weonard's* ; that it be referred to the deputy remembrancer to take an account of what is due from the defendant to the plaintiffs for the value of the tithes of the said wood cut and felled

felled by the defendant during the time mentioned in the bill ; and that the said defendant do pay to the plaintiffs his costs of this suit to be taxed by the said deputy.

EVANS  
against  
GWILLIM.

## HOLE against BUCK.

HILARY TERM  
2. GEO. 3.

Devonshire, 23d February 1762.

THE bill stated, that the plaintiff, for ten years past, had been vicar of the parish of *Burrington*, in the county of *Devon*, and that, as such, he and his predecessors, for time beyond memory, had been entitled to the tithes of wood, and to all vicarial tithes arising in the parish, in kind ; that the defendant *Buck* then was, and for several years before had been, occupier of certain woodlands in the parish, and particularly of *Narracot*, otherwise *Northcot Coppice*, containing forty acres, and of divers grounds inclosed by hedges, containing coppice and other wood ; that he had, during the last three years, felled great quantities of coppice wood, underwood, and hedgewood in *Narracot Coppice*, and in and near the hedges and fences of the said inclosed grounds, and had converted the same to his own use, without setting out the tithes thereof, or compounding or making any satisfaction for the same ; that he, the plaintiff, had frequently applied to him for an account of the particulars, quantities, and values of the wood so cut by him, and for a satisfaction for the tithes thereof ; but that he had refused the same under several pretences. The bill therefore prayed a discovery, and that the defendants might come to an account with, and make satisfaction to the plaintiff for the value of the tithe of the said wood.

The vicar of *Burrington*, in *Devonshire*, is entitled to the tithes of wood felled in *Narracot Wood*, and in the *hedgerows* and *coppices* of the inclosed grounds in the parish, from the owner of the soil, though he has sold the fall.

The defendant *Buck* admitted that the plaintiff was vicar of *Burrington*, and entitled to the tithes of all titheable wood arising within the parish ; that he was the owner and occupier of *Narracot Coppice*, and of the hedges belonging thereto, but of no other woodlands or hedge wood in the parish ; and that the said wood contained about thirty-eight acres and a half, and no more ; but he denied that he had, during the said three years, felled any wood in *Narracot Coppice*, or in or near any of the hedges of the said inclosures ; and said, that in the year 1755 he sold all the coppice wood and underwood in *Narracot Wood* to the other defendants, who, in the said years, had felled and carried away a considerable part thereof, and disposed of the same to their own use, without setting out the tithes thereof, or making the plaintiff any satisfaction for the same ; that almost the whole of the wood so felled consisted of large trees of above forty years growth ; that the greater part of them was used for buildings ; that the other part was made into charcoal ; and that, by the statute of *Silva Cadua*, no tithe

Holt  
against  
Buck.

was payable for the same; that the underwood which was cut down therein did not exceed ten pounds in value; that the said underwood was carried away without setting out the tithe thereof, or making the plaintiff any satisfaction for the same; and that the tithes thereof amounted to no more than twenty shillings; and that he was willing to pay the same to the plaintiff with his costs. He denied that he had ever pretended that any *modus* was due in lieu of tithe wood, or that he had taken any part of the said wood so felled to his own use; but said, that he had sold the same to the other defendants by contract, and had covenanted and agreed not only to discharge them from all the tithes thereof, but to indemnify them from any suit or demand in respect thereof. He further said, that his grandfather had purchased the said wood; that in the year 1711 he sold the coppice for four pounds, nine shillings an acre; that the wood was then felled; that it had not been felled from that time until the present; and that no tithes were then, or had been at any other time whatever, paid for the same.

The other defendants said, that they had, in the year 1755, contracted with the defendant *Buck* for the said wood; that they had felled it; but that being indemnified by him, they had not taken any account of the quantity it contained.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides; and on reading the answer of the defendant *Buck*; and the proofs taken in the cause; and on debate of the matter;

THE COURT ordered the defendant *G. Buck* to account for the value of the tithes of the wood called *Narracot Wood* aforesaid, felled and cut during the time in the bill mentioned, and pay to the plaintiff his costs of this suit. The consideration of subsequent costs, and all further directions, to be reserved till after the report.

EASTER TERM  
2. GEO 3.

### WILLIAMS against CLARKE.

*Essex*, 29th April 1762.

The rector of  
*Little Tey*, in  
*Essex*, is entitled  
to the great and  
small tithes of  
the close called  
*Appleton Field*.

THE bill stated, that the plaintiff, in *January* 1733, was instituted rector of *Little Tey*, in the county of *Essex*; that in *February* following he was duly inducted thereto; that, by virtue thereof, he became entitled to the great and small tithes arising therein, and particularly to the tithes of *Appleton Field*; that he had, until *Michaelmas* 1756, received ten shillings a-year of the respective tenants of the said field for the great and small tithes thereof, except for two years; that the defendant held the same during the said two years, and subtracted the tithes thereof; that from *Michaelmas* 1756 the said field had been in the



the possession of the defendant, the rector of *Great Tey*, or his under-tenants; that the said parish is adjoining to *Little Tey*; and that he had, during that time, refused to pay him the great and small tithes of the said field, though often applied to for the same. The bill therefore prayed, that the defendant might be decreed to come to a fair account with the plaintiff for the great and small tithes of the said field from *Michaelmas* 1756; that he might pay what should appear to be due for the same; and that the growing payments thereof might be established by the decree of this court.

WILLIAMS  
against  
CLARK.

The defendant admitted, that the plaintiff was rector of *Little Tey*, and that he was rector or impropiator of *Great Tey*; that the said parish adjoins to *Little Tey*; and he said, that it was formerly part of the estate belonging to the dissolved priory and convent of *Colechester*; that he and his predecessors, rectors of the said impropriate rectory of *Great Tey*, were entitled to the nomination, and had generally presented to the vicarage of *Great Tey*, as the same became vacant; that he is, as rector thereof, entitled to certain tithes yearly arising therein, and the titheable places thereof, and also to certain glebe lands, as appertaining thereto, and particularly to *Appleton Field*, situate in the parish of *Little Tey*; that the said field, since *Michaelmas* 1756, had been in his own hands; and that it was part of the glebe land of *Great Tey*; that the plaintiff was not entitled to the great and small tithes thereof; that such tithes had not been immemorially paid to the rectors of *Little Tey*; but that by endowment, ancient custom, or prescription, two parts in three of all and singular the tithes and titheable matters yearly arising from the said field, of right belonged to the vicars of *Great Tey*, and the other third to the rector of *Little Tey*: and, after admitting that he had refused to pay the plaintiff the whole of the great and small tithes of the said field, he said, that he hoped he should not be obliged to pay him more than one third of the tithes thereof; that he was ready to pay him the same from *Michaelmas* 1756, and for the future while the field continued in his possession: and he insisted, that although he could not set forth such endowment, or where it was to be found, yet that the constant usage for time immemorial would be evidence of such endowment, though the same might be by length of time lost or mislaid. He admitted, that the plaintiff had received from the tenants of the said fields all the tithes for the same; but said, that the same was paid upon an indemnity given to them by him, contrary to his, the defendant's, express orders.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides;



WILLIAMS  
against  
CLARKE.

THE COURT ordered the defendant to account with the plaintiff for the great and small tithes arising yearly in *Appleton Field*, situate in the parish of *Little Tey*, from *Michaelmas* 1756, with costs of this suit; and on the thirteenth of *July* 1762, the deputy's report was confirmed, and the defendant ordered to pay to the plaintiff sixty-six pounds, nine shillings, and elevenpence reported due for his tithes and costs.

EASTER TERM,  
2. GEO. 3.

BINGHAM against OKEDEN.

*Dorsetshire*, 3d May 1762.

The rector of the parish of *Moor Critchell*, in *Dorsetshire*, claims the tithes of *Moor Critchell Farm* and *Gilbert's Mead* in kind.

THE bill stated, that the plaintiff, in *September* 1755, was duly instituted into the rectory of *Moor Critchell*, in the county of *Dorset*; had ever since been rector thereof; and was thereby entitled to the tithes in kind of all titheable matters arising in the parish; that the defendant *Okeden* had been, for several years past, owner and occupier of several lands therein, particularly of *Critchell Farm*, and of several other tenements and farms, and of a large tract of coppice woodland; that the said farms and lands had been, for four years past, sown with wheat, oats, barley, rye, beans, and other grain, and had also produced hay and other crops; that the defendants, or one of them, had caused several acres of coppice wood to be cut down during the said years, and had had great quantities of wool, lambs, pigs, milk, and calves, the tithes of all which they had, under various pretences, converted to their own use. The bill further charged, that if the defendant *Okeden* was impropiator of the *Demesne Lands*, yet that a great part of the land in his possession in the parish was no part of such *Demesne Lands*, particularly *Gilbert's Mead* and other lands; and he denied that there was any *modus* for the said lands. The bill therefore prayed, that *Okeden* might set forth how he claimed to be exempt from the payment of tithes; how he was impropiator thereof; the terrier of his lands pretended to be exempt from payment of tithes, or of which he claimed to be impropiator; a description of all other his lands in the parish; and how he made out his title to the *modus* which he pretended to claim the benefit of; the quantity of corn, grain, hay, and other produce, which had arisen or grown on the premises during the said years; the value of the tenths thereof; the quantities of wood that had been felled off the said wood lands in the said years; the value of the tithes thereof; an account of all wool, lambs, pigs, milk, and calves, in each of the said years; the tenths thereof; and pay to the plaintiff the full value of the said tithes.

The

The defendant *Okeden* admitted, that from the fifth of *April* 1757 he had been owner and occupier of a mansion-house, a garden, two orchards, of *Moor Critchell Farm*, and of *Sims Tenement*, which was always esteemed part of the said farm, and had been occupied by him since *Michaelmas* 1758, from which time it had remained uncultivated; that from the fifth of *April* 1757 he had been also owner and occupier of *Dominy's Mead*, and one acre and a half of arable ground, part of *Dominy's Tenement*, which produced no corn or grain, and but very little hay and grafs; that from that time he had also been owner and occupier of *Hollygrove Coppice*, part of the said farm; that the wood arising therefrom had been always used for fireboot, hedgeboot, and other purposes, on the said farm; that he had also occupied *Staple Croft Coppice* and *Oakhill Coppice*, which are no part of the said farm; and he denied that before that time he had ever occupied those or any other lands in the parish; and insisted, that the said lands and other premises so by him occupied were not subject to the payment of any tithes of corn, grain, wood, or any other great tithes whatsoever to the plaintiff, as rector of the parish, nor in any manner liable to the payment of any tithes to him, save as after mentioned. He admitted, that for two years the said farm had been sown with wheat, oats, barley, and other grain; and that no tithes had been paid for the same; and he set forth the produce thereof, and the titheable matters he had had in other years, saying, that he believed that no tithe had ever been paid to the plaintiff, except that the defendant *Strickland* had paid him thirty-two pounds as a *modus*, and not as a *composition* for the small tithes of the said farm to *Lady Day* 1757. He further stated, that he was before the year 1755, and had ever since been, lord of the manor of *Critchell Parva*, and of all the *Demefne Lands* and premises thereto belonging, with its rights and appurtenances; that all the land and premises in his answer set forth had always been esteemed parcel of the *Demefne Lands*; that he and his predecessors lords of the said manor had been, for some hundred years last past, lords and rightful impropiators of, and well entitled to, all and singular the tithes of corn and grain, wood, and all other great tithes, arising from the *Demefne Lands* of the said manor; that *J. Uvedale* was in his life-time, and to the day of his death in the month of *March* 1572, seised in fee of the said great tithes; that on his dying without issue, they descended to *H. Uvedale*; that by several mesne conveyances they became vested in *W. Okeden*, the defendant's late father, in fee; that *W. Okeden*, by will, devised the same to him; and that he was thereby the legal impropiator thereof; that the lords of the said manor, or others owners of *Moor Critchell Farm*, their farmers or lessees, had immemorially paid to the rector thirty two pounds a-year as a *modus*, in lieu or full payment of all manner of small tithes arising on the said farm; that the said *modus* had immemorially been

BINGHAM  
against  
OKEDEN.

The defendant says, that he occupied *Moor Critchell Manor*, of which *Sims's Tenement* is parcel, from *Michaelmas* 1758;

that he also had occupied *Dominy's Mead* and *Hollygrove Coppice*, also parcels of the said farm; and also *Staple Croft Coppice* and *Oakhill Coppice*, no part of the said farm;

but no other lands in the parish;

and insists, that no tithes are payable for corn, grain, and wood, or other great tithes on the said farm;

that he is lord of the manor of *Critchell Parva*, and entitled to the great tithes of the *Demefne Lands* of the said manor;

that there is a *modus* of 32l. a-year payable in lieu of the small tithes of *Moor Critchell Farm*;

been

BINGHAM  
against  
OKEDEN.

that Gilbert's  
Mead never was  
in his occupa-  
tion ;

that Dominy's  
Mead and tene-  
ment are parcel  
of the *Demesne*  
Lands, but not  
parcel of the  
farm, and the  
small tithes  
thereof due to  
the plaintiff ;

that Staple Croft  
Coppice and Oak-  
bill Coppice are  
also parcels of  
the *Demesne* ;  
or, if not,

that the wood  
felled therein  
is great tithe ;

been considered and received as an ancient established prescriptive *modus* in the said parish ; that he was ready and had offered to pay the same for so many years as were in arrear. He admitted, that the said *modus* had not been accepted by the plaintiff since *Lady Day* 1757 ; and denied, that the plaintiff had ever applied to him for any tithes whatever, except the said *modus* and the tithe of the coppice wood ; or that Gilbert's Mead was ever in his occupation. The defendant further insisted, that Dominy's Mead, the corn ground part of Dominy's Tenement, and four other small tenements, containing about thirty-one acres of corn land, were part of the *Demesne Lands*, but not part of the said farm ; and he admitted, that the small tithes growing thereon were due to the plaintiff exclusive of the *modus*, and he offered to pay him the value thereof. He further said, that three acres of land part of Gilbert's Tenement were not part of the *Demesne Lands*, or of Moor Critchell Farm ; and that the great and small tithes thereof had always been paid to the plaintiff. He also insisted, that the said several coppices and wood lands were part of the *Demesne Lands*, and covered from the payment of tithes by the said *modus* ; but that if they were not part of the *Demesne Lands*, the tithes of the same had always been esteemed great tithes ; and that therefore no tithe wood felled in the said coppices ought to be paid to the plaintiff. He further said, that he did not believe that the said *modus* of thirty-two pounds a-year had ever been paid by virtue of any private agreement as a composition ; but insisted, that it was a real composition and prescriptive *modus* immemorially paid by the owners of Moor Critchell Farm to the rectors, in lieu and full satisfaction of all small tithes growing and renewing on the said farm and the grounds thereof ; and hoped that he should not be compelled to account for or pay to the plaintiff any tithe of corn, grain, and wood, or any other great tithe, for lands in his possession, or that were parcel of the *Demesne Lands*, nor for any small tithes growing or renewing on Moor Critchell Farm, or any satisfaction for the same, except the said *modus*, and the small tithes arising from Dominy's Mead, and the other premises.

that the plaintiff  
had accepted  
the *gal.* as a *mo-*  
*du*s for the small  
tithes of the said  
farm.

The defendant Strickland said, that he was receiver, by appointment of THE COURT OF CHANCERY, of the farm, coppice, and lands in the bill mentioned, until *Lady Day* 1757, when the defendant Okeden came into possession ; that on the eighth of February 1757 he had paid the plaintiff thirty-two pounds for one year's tithe of Critchell Farm, due at *Old Lady Day* 1756 ; that the said *modus* had, for many years before, been paid in satisfaction of such tithes ; that the plaintiff had applied to him for the tithe of the wood he had cut ; and that he had refused to comply therewith.

The evidence  
read.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on the plaintiff's part as well as on the defendant

Okeden's



*Oleden's* part; and upon hearing counsel; and reading the answer of the defendant *Oleden*; a copy of a grant, dated the thirteenth of *March*, in the fourteenth year of *Queen Elizabeth*, to *Badbey* and *Dowing*; a lease to *Lord St. John*, dated the twenty-fourth of *November*, in the fifth year of *Edward the Sixth*; an exemplification of a record in the court of king's bench, tested the eighteenth of *November*, in the twenty-second year of *Queen Elizabeth*, of a verdict in a cause in the said court, *Uvedale v. Thomas*, given in *Hilary Term*, in the twenty-first year of the said queen, Roll 412; an exemplification of a recovery, tested the twelfth of *February*, in the twentieth year of *James the First*, wherein *George Uvedale* was vouchee; an exemplification of a fine made the twentieth of *May*, in the fourth year of *Charles the First*; the proofs in the cause; a copy of a record of the first fruits office in the records of *Dorsetshire*, in the twenty-sixth year of *Henry the Eighth*; and on hearing what could be alledged by the counsel on both sides;

BINGHAM  
against  
OKEDEN.

THE COURT ordered the bill to be dismissed with costs as to the tithe of corn and grain, and as to the tithes for the tenements which were not in the defendants possession; that the defendants, or one of them, do account with, satisfy, and pay to the plaintiff the tithe of hay, pigs, wool, and lambs, of one cow, and of wood during the time demanded by the bill, with costs to this time, to be taxed; and that the deputy remembrancer do enquire into and state who occupied the lands in the pleadings mentioned in 1755 and 1756; and whether the defendant *Oleden*, since 1756, undertook to pay the plaintiff the tithes of his milk and calves: further directions and costs to be reserved until after the report.

The bill dismissed as to *Gilbert's Mead*, and as to the tithes of corn and grain.

The tithes of hay, pigs, wool, lambs, cows, and wood, decreed.

HENNING against WILLIS.

*Dorsetshire*, 10th May 1762.

EASTER TERM  
2. GEO. 3.

THE bill stated, that *G. Trenchard*, deceased, being, in his life-time, impropiator of the tithes after-mentioned, did, by indenture dated the twenty-fourth of *December* 1756, demise to the plaintiff "all those his impropriate tithes arising on the several farms and lands in the several parishes or hamlets of *Stratton* and *Grimston*, to hold from the fifth of *April* then next for one whole year;" that upon his death his son granted to the plaintiff the same for another year; that thereby the plaintiff, for the said two years, became entitled to have and receive the said tithes; that the defendant, during the time the plaintiff was so lessee, had divers titheable matters on *Langford Farm*, as enumerated in the bill; but that he had concealed the quantities, qualities, and values thereof, and had refused to make the plaintiff any satisfaction for the same. The bill therefore prayed,

The plaintiff, as lessee of the tithes of the hamlets of *Stratton* and *Grimston*, in *Dorsetshire*, under a parol agreement with the impropiator for two years, claims the tithes of *Langford Farm*.



HENNING  
against  
Willis.

The defendant demurs on account of the impropriator not being a party; and insists, that he had fully paid his tithes.

prayed, that the defendant might discover his titheable matters, and come to an account, and pay the plaintiff for the same.

The defendant, to so much of the bill as sought to compel him to discover the titheable matters he had on the said farm from and after the fifth of *April 1758*, or the values thereof, or to account for the tithes thereof, demurred in law; for that the plaintiff had not, by his bill, stated any case that would entitle him to the discovery or relief thereby prayed from and after the fifth of *April 1758*. With respect to the residue of the bill, the defendant insisted, that he had fully set out his tithes in kind, and had paid or satisfied the plaintiff for all the titheable matters and things which he had on any of the lands occupied by him within the several parishes or hamlets.

The plaintiff amends his bill, makes the impropriator a party to it, and demands the tithes of one acre of vetches, of forty-five fat sheep, and of eighty lambs.

The plaintiff submitted to the demurrer, and, amending his bill, added thereto *J. Trenchard*, the owner of the tithes, as a defendant, and charged, that he was entitled to the tithes in the several parishes and places during the said time, by virtue of the said *parol agreement* made with *Trenchard*, and that he had paid the rent of seventy pounds, four shillings, and fourpence to him for the year ending on the fifth of *April 1759*; that the defendant *Willis*, from the fifth of *April 1757* to the fifth of *April 1759*, occupied the lands and farms in the bill mentioned, and had depastured thereon sheep and lambs, some of which he shorn, and others he removed just before the shearing time to places unknown, without rendering any tithes for the same; that he had also mowed several acres of grass, and made the same into hay, without setting out the tithes thereof; and that he had also depastured divers barren cattle, without making any recompence for the tithes thereof, and had refused to pay the same. The bill therefore prayed, that *Willis* might account for and pay to the plaintiff the full value of the said tithes; or if he shall refuse so to do, that he may account for the same with the defendant *Trenchard*, and pay into court for the plaintiff's use what should be found due thereon.

The impropriator admits, that he gave a *parol lease* to the plaintiff for two years.

The defendant *Trenchard* admitted, that his late father having been seised of the said tithes had leased the same to the plaintiff for one year, and that at his death he had agreed that the plaintiff should hold the same for another year till the fifth of *April 1759*, under the rent in the bill mentioned; but that he was a stranger to the other matters in the bill.

The defendant says, that he ploughed the acre of vetches into the ground to manure it for another crop.

The defendant *Willis* by his further answer stated what farms and lands he occupied; and insisted, that he had fully paid and satisfied the plaintiff for all his tithes arising on *Stratton* and *Grinston Farms*; that he had duly set out the tithes, without fraud, of all other his titheable matters and things arising on the other lands, except one acre of vetches, which he ploughed into the ground for meliorating the soil for a subsequent crop, and for

for which he insisted that no tithes were due. He also said, that he had depastured forty-five fat sheep from shearing time till the beginning of *November* in the said year 1758, for which he had tendered to the plaintiff one halfpenny each, being the full value of the said tithes, but which he had refused to accept. He also said, that he had eighty lambs, which being very young at the usual time of tithing lambs, the plaintiff chose to have a pecuniary recompence for the same, and which they referred to arbitration. He also said, that the plaintiff made him debtor in two pounds, fifteen shillings, and sixpence halfpenny, although, as the defendant averred, only one pound, sixteen shillings were, in fact, due; and that being desirous to live in peace with the plaintiff, he had tendered to him three pounds, three shillings, in full for the tithes due as aforesaid, but which he had refused to accept without his costs of suit; and he insisted, that at the time when such tender was made, before the bill was amended, no costs of suit were due from him to the plaintiff; and that such tender was the full of the tithes due as aforesaid.

The cause now came on to be heard on the bill and answer; and upon hearing counsel; and reading the defendant's answer;

THE COURT ordered the defendant *Willis* to pay to the plaintiff three pounds, three shillings so tendered by him to the plaintiff, as mentioned in the said answer; and the plaintiff to pay to the defendants respectively their costs of suit to be taxed.

HENNING  
against  
WILLIS.  
that the forty-five sheep were only depastured from shearing time to the beginning of *November*, and that he had tendered  $\frac{1}{2}$ d. for each; that the tithes of the eighty lambs was referred to arbitration; that he only owed the plaintiff 1l. 16s. and had tendered him 3l. 3s. without costs, the tender being made before the bill was amended.

The defendant ordered to pay the 3l. 3s. and the plaintiff to pay costs.

## TOWNLEY against TOMLINSON.

*Lancashire, 21st June 1762.*

TRIN. TERM,  
2. GEO 3.

THE bill stated, that the plaintiff, ever since the first of *October* 1756, had been seised of one undivided moiety of all and every the tithes, both great and small, and of all money due or payable for or in lieu of tithes, and of *Easter* offerings, yearly arising within the township of *Pilling*, within the impropriate rectory and parish of *Garstang*, in the county of *Lancaster*, and had been in the receipt of the rents and profits thereof, except of such parts as had been subtracted or withdrawn; that from the same time the defendants *J. Bennison*, clerk, and *Mary Alderson*, widow, as mortgagee under him, had been seised and in possession of the other moiety of the said tithes; that the defendant *Tomlinson* and others had, in the years 1757 and 1758, held and enjoyed several and distinct lands and grounds within *Pilling* and the ritheable places thereof, and had thereon in each year corn, grain, flax, hemp, potatoes, and other roots, apples, and other fruits, and also herbs, flowers, and seeds, the tithes whereof

The impropriatrix of a moiety of the great and small tithes of the township of *Pilling*, in the parish of *Garstang*, in *Lancashire*, files her bill to recover her moiety of the said tithes.

TOWNLEY  
against  
TOMLINSON.

whereof ought to have been set out in kind ; but that they converted the same to their own uses, without making the plaintiff any recompence for her moiety thereof ; that they had, during the said years, depastured on part of the said lands cows, sheep, and mares, which had produced calves, lambs, and colts ; that they had clipped great quantities of wool ; that they had depastured and agisted barren and unprofitable cattle, and had kept many pigs, much poultry, and several stocks of bees ; that they were also indebted for *Easter* offerings and other ecclesiastical dues ; that the plaintiff was entitled to a moiety of the tithes arising from the said titheable matters, and to a moiety of the said dues and offerings, but that the said defendants had refused to account for the same, on various pretences that the said lands were exempted from the payment of tithes, or that certain *modus*es were payable for the same ; but that, on the contrary, the said lands were not exempted from the payment of tithes in kind by virtue of any *modus* or exemption whatsoever. The bill therefore prayed a discovery of the premises, and that the defendant *Tomlinson* and others might be decreed to account with the plaintiff, and pay to her one moiety of all and every the said tithes and other ecclesiastical dues, or the full value thereof, respectively in each of the said years.

The defendant  
*Tomlinson* says,  
that it does not  
appear that the  
plaintiff is enti-  
tled to the said  
moiety, as she  
has not set forth  
the person under  
whom she claims ;

that *Pilling* is a  
distinct and in-  
dependent parish  
from *Garstang* ;

that he occupied  
messuages and  
lands therein ;

The defendants *Tomlinson* and others said, that they did not know whether *Mary Howard*, otherwise *Standish*, had been, in her life-time, in the receipt of the rents and profits of a moiety of the tithes of *Pilling*, nor whether *Ralph Standish Howard*, her husband, was, in his life-time, in the receipt thereof ; nor whether the same were in the possession of any of the *Standish* family before him ; nor who was entitled thereto ; nor could they form any belief in relation thereto in regard the plaintiff had not by her bill set forth under whom she claimed the same. They also said, that they did not know that the said *Mary* had been, or that the plaintiff then was seised of or entitled to an undivided moiety or other part of the tithes in *Pilling* ; nor that the township of *Pilling*, or the titheable places thereof, were within the impropriate rectory of *Garstang*, as alledged in the bill. They further said, that the church or chapel of *Pilling* was a parochial one ; that the township of *Pilling* had been reputed, and really was, an entire township and manor of itself ; that a court was held for it ; that it maintained its own poor, and raised its own taxes, without joining with any other township ; that the inhabitants therein never paid rates to the parish-church of *Garstang*, nor any dues to the vicar of that church ; and that neither the vicars nor churchwardens of the said church ever exercised any jurisdiction in *Pilling*, as being part of the parish of *Garstang*. The defendants admitted, that they had, in the said years, occupied certain messuages and lands in *Pilling* ; that they had sown and reaped the several crops of corn ; that they had made grafs into hay, and



and had had the several other titheable matters mentioned in their answers; but they said, that the several messuages and lands by them occupied were parcel of the possessions of the abbey of *Cockersand*; that the said abbey was one of the greater monasteries; that it came to the crown by virtue of the statute 31. *Hen. 8.*; that it had been a monastery and abbey beyond memory; and that all, or the greater part of the lands in *Pilling*, were parcel of the possessions of the said abbey; that part of such lands, viz. the messuage called *the Abbey House*, *the Moss*, *the Mill Pasture*, and *the Barn Farm*, were part of the *Ancient Demeasies of Pilling*; that they were before, and at the time of the dissolution of the monastery, enjoyed by the abbot and convent thereof free from the payment of any tithes or ecclesiastical dues, or of any *modus* in lieu thereof, whether such lands were in the immediate possession of the abbot and convent, or of their farmer; that the farm or tenement in *Pilling*, belonging to *Roger Hesketh*, now in the tenure of the defendant *France*, and the messuage called *Pillinghall*, in the tenure of *Henry Threlfall*, had never paid any tithe in kind or any *Easter* offerings; but that each of those tenements had immemorially paid a *modus* of ten shillings a-year in lieu of all the tithes and *Easter* offerings yearly arising thereon respectively; that all the other lands in *Pilling* (except those before mentioned to be exempt, as having been abbey lands, and those before mentioned to be discharged by *modus*) were held by the abbot and convent of the abbey of *Cockersand*, before and at the time of the dissolution thereof, discharged from the payment of any tithes or ecclesiastical dues, or any *modus* in lieu thereof, when the same were in the immediate possession or occupation of the abbot and convent, and not let to tenants; for that the abbey was founded before the council of *Lateran*, and the abbot and convent of the *Premonstratensian* order, and were, by virtue of their order, freed in respect of the said last-mentioned lands from the payment of any tithes or ecclesiastical dues whilst the said lands were in the occupation of the abbot and convent, and were not let to tenants or farmers; and they insisted, that the lands which they respectively occupied, together with the other possessions of the abbey, did, by surrender made by the said abbot and convent unto *Henry the Eighth*, in the thirtieth year of his reign, and the said act of parliament or one of them, become vested in the said king, his heirs and successors, discharged from the payment of tithes, in the same manner as when they belonged to the abbey. They further stated, that the said king, by his letters patent dated the first of *September*, in the thirty-fifth year of his reign, granted to *J. Kitchen* and his heirs "all that the site of the "house or mansion of the late monastery, and all those crofts "and arable lands, and three closes of moor, called *Mill Pasture*, *Moss Close*, *Beggars Close*, and *Pilling Grange*, and all "and singular the *Demeasne Lands* of the monastery of *Cockersand*,

VOL. III.

D

" and

TOWNLEY  
against  
TOMLINSON.

that the said messuages and lands were parcel of the possessions of the dissolved abbey of *Cockersand*; that those parts of the said messuages and lands called *the Abbey*, *the Moss*, *the Mill Pasture*, and *the Barn Farm*, were the ancient *demeasne* lands of *Pilling*, and were, at the dissolution of the abbey, held tithe free, whether in the occupation of the abbot or of his tenants; that *Hesketh's Farm* and *Pillinghall Farm* pay each a *modus* of 10s. a-year in lieu of tithes; that all the other lands in *Pilling* were freed from tithes while in the occupation of the abbot;

that all the said lands were surrendered tithe free to *Henry the Eighth*;

that *Henry the Eighth* granted the *Mill Pasture*, the *Moss Close*, the *Beggars Close*, the *Pilling Grange*, and all the *Demeasne Lands*, tithe free, to *J. Kitchen*;



TOWNLEY  
against  
TOMLINSON.

that no tithes  
had ever been  
claimed for the  
said lands, whe-  
ther they were  
in the hands of  
the owners or of  
their tenants ;  
and that the  
non-payment is  
evidence of the  
exemption ;

that for the o-  
ther lands in  
*Pilling* not so  
exempted from  
tithes there are  
payable the fol-  
lowing *modus* :

1d. a-year, at  
*Easter* ;

2d. a-year, in  
lieu of the tithes  
of garden stuff  
and herbs ;

ad. for a milch  
cow, and 1d. for  
a calf ;

“ and then late in the occupation or culture of the late abbot of  
“ the said monastery at the time of the dissolution thereof, to  
“ hold the same to him, his heirs and assigns, in as ample  
“ manner as the said last abbot, or any of his predecessors, held  
“ the same ;” and therefore insisted, that the said messuages  
and hereditaments were entitled to the benefit of the same  
exemption as that under which the said abbot held the same before  
the dissolution : and they averred, that they believed that the said  
messuages and hereditaments were exempt from payment of tithes  
and other ecclesiastical dues, whether in the hands of the owners  
thereof, or when let to tenants, as they had never, within the me-  
mory of man, paid any tithes or ecclesiastical dues whatever, nor  
had any such been ever claimed, whether the said lands were in  
the occupation of the owners of the inheritance thereof, or were  
let to tenants ; and that such non-payment is evidence of exemp-  
tion. They further said, that the remainder of the lands in *Pilling*  
(except those discharged by *modus* aforesaid) were exempt from  
the payment of tithes and other ecclesiastical dues, or of any  
*modus* in lieu thereof, when in the hands and occupation of the  
owners of the inheritance thereof ; and that such remainder of  
the said lands being extensive, and the inheritance thereof,  
until sixty or seventy years last past, being vested in a very few  
persons, who lived at a distance, and who had leased the same for  
lives or years, the tenants thereof were liable to pay tithes for  
such lands, and had accordingly paid the same. They further said,  
that they believed that there had been, and was an ancient  
custom within *Pilling*, that every householder being single, and  
only lessee or farmer of the house wherein he or she dwelt  
(except those who dwelt in houses upon the said lands exempt in  
manner aforesaid from payment of tithes, whether in the hands  
of owners or tenants, and except upon the lands discharged by  
*modus* as aforesaid, and except the lessees of two messuages in  
*Pilling*, in the possession of G. Dickinson and of the defendant  
Harrison, which claim to be exempt from payment of all tithes  
by *modus*, save the tithes of corn and grain) should pay one  
penny yearly, at *Easter*, or so soon after as demanded ; that  
every householder being a married man, and only a lessee  
(except as aforesaid), should pay twopence yearly to the owners  
or impropiators of the said tithes of *Pilling*, in lieu of the tithes  
of roots, herbs, seeds, fruits, flowers and other garden stuff ;  
and that the said sum had been immemorially accepted in lieu  
of the said tithes ; that there had been also, and was another  
ancient custom therein, that the occupiers of land there, being  
lessees (except of lands exempt in manner aforesaid from  
payment of tithes whether in the hands of owners or tenants,  
and except of lands discharged by *modus*), shall pay yearly, at  
*Easter*, or so soon after as demanded, twopence for every milch  
cow that has a calf, and one penny for every milch cow that has  
not a calf between *Easter* and *Easter*, which are called *bands*  
or

# DURING THE REIGN OF GEORGE THE THIRD.

for *whites*, in lieu of tithe milk; that such yearly payments had, for all the time aforesaid, been accepted accordingly: that there was also another custom, that every occupier of lands in *Pilling*, being lessee or farmer thereof, except as aforesaid, should yearly and every year, at *Easter*, when he kept a plough therein, pay one penny to the impropriator, in lieu of the tithe of agistment of barren and unprofitable cattle, depastured on the lands so held by him as lessee; and that the same had been accepted accordingly; and that therefore no tithe was due for the agistment of barren cattle depastured as aforesaid: that there was also another custom, that every occupier, &c. should gather and set up in sheaves and hattocks the tithes of all corn arising on their respective lands; and that, in consideration thereof, every such occupier should only set up every tenth hattock, without paying any thing for the tithe of the odd hattocks under ten; and that the corn in each close, and of each species, should be tithed separately, without counting out of one close into another, or out of one species of corn into another; and that the said several customs had been observed therein for time immemorial: that also, by ancient custom, the occupiers of messuages and tenements in *Pilling*, except as aforesaid, had, for and in respect of such as they held as lessees or farmers, paid the following tithes, *Easter* offerings, and ecclesiastical dues, *viz.* that every householder should pay threepence for oblations and *Easter* offerings; one pig for the tithe of pigs, if there were seven or more, and under seventeen; two if there were seventeen pigs or more, and under twenty-seven pigs; and one pig for every ten pigs above seventeen; the like *modus* for geese: one penny for a foal, the year it was foaled; one halfpenny for every calf, the year it was calved; one penny for every swarm of bees; one halfpenny for eggs, if any; and one halfpenny for hemp and flax. The defendants set forth an account of the lands they respectively held during the time for which tithes were demanded, and the several particulars and values of the tithable matters which had arisen thereon; and insisted on the several *moduses* and exemptions before mentioned.

The defendant *John Harrison* insisted, that for all the premises occupied by him, the sum of thirteen shillings and fourpence a-year had been immemorially paid to the owners of the tithes of *Pilling*, as a *modus*, in lieu of all manner of ecclesiastical dues and tithes arising thereon, except the tithes of corn and grain; and that the same had always been accepted accordingly.

The defendant *Robert Whitehead* denied the plaintiff's title to the tithes in like manner as the other defendants had done; and insisted on the several *moduses* which were mentioned in the other answer; and after setting forth the lands and tenements he occupied, he further insisted on a *modus* of fourpence a-year for tithe hay growing on *Morning Meadow*.

D 2

TOWNLEY  
against  
TOMLINSON.

1d. a-year in lieu of agistment tithes;

that corn should be tithed in sheaves and hattocks, and no tithe paid for odd numbers;

that each field should be separately tithed;

3d. a-year for oblations and *Easter* offerings; one pig when there are seven, and under 17; two when there are 17, and under 27; and one pig for every 10 above 17; the like for geese; 1d. for a foal; 1d. for a calf; 1d. for bees; 1d. for eggs; and 1d. for hemp and flax.

The defendant *Harrison* insists on a *modus* of 13s. 4d. in lieu of the tithes, except of corn and grain, of his farm.

The defendant *Whitehead* insists on the said *moduses* and exemptions, and on a *modus* of 4d. a-year for the tithe hay of *Morning Meadow*.

The

TOWNLEY  
against  
TOMLINSON.

The defendant  
*Bennison* says, the  
plaintiff is enti-  
tled to a moiety  
of the tithes in  
kind.

The defendants *Bennison* and *Alderson* said, that the plain-  
tiff was entitled to a moiety of the tithes of *Pilling*, and that  
the defendant *Bennison* was entitled to the other moiety thereof,  
which was in mortgage to the defendant *Mary Alderson*. They  
also said, that all the land-owners in *Pilling* had, for many years  
together, set out and paid their tithes; yet that several of them  
had, of late years, refused so to do.

The defendants *Dinsonson* and *Hodgson*, the trustees, put in the  
usual answer.

The plaintiff replied to the answer of the defendants *Tomlin-  
son* and others; and they rejoined; and witnesses were examined  
on both sides.

The evidence  
read.

The cause came on to be heard before a full court on the  
seventh and eighth days of *December* last; and upon hearing  
counsel; and reading, on behalf of the plaintiff, an indenture  
dated the sixteenth of *June* 1697, signed *William Standish* and  
others; an indenture dated the nineteenth of *July* 1726, signed  
*Litchfield* and others; the exemplification of a recovery, dated  
the twenty-fifth of *August*, in the thirteenth year of *Charles the  
First*; several depositions; and on hearing the defendants  
counsel, and reading, on their behalf, a copy of the ministers  
accounts taken from the augmentation office, viz. the account of  
*John Kitchin* from the feast day of \_\_\_\_\_, in the thirtieth year  
of *Henry the Eighth*; to the like feast in the thirty-first year, of  
the revenues and profits of the rectory of *Gatflang*, and the tithes  
and grange of \_\_\_\_\_, belonging to the then late dissolved  
monastery of *Cockersand*; the deposition of *Barth Rich*; a  
copy of the surrender of the said monastery of *Cockersand*, dated  
the twenty-ninth of *January*, in the thirtieth year of *Henry the  
Eighth*; and upon the defendants offering to read the deposition  
of *A. Johnson* to prove the parochial *moduses* in their answer  
mentioned, and the counsel for the plaintiff objecting there-  
to, for that he was an incompetent witness to prove the same,  
as being a party interested therein, and the Court allowing  
the said objection; and on reading the deposition of the said  
*A. Johnson* taken upon his cross examination; and also the  
depositions of several other witnesses; the deposition of the said  
*A. Johnson* taken on the behalf of the defendants to the twelfth,  
thirteenth, and fourteenth interrogatories; several receipts from  
the fourteenth of *November* 1698, and ending the first of *May*  
1758, and signed *T. Hunter*, &c.; the further hearing of this  
cause was adjourned over to the fourth day of *February* last, and  
came on to be further heard the fourth, eighth, and ele-  
venth of *February*, when, on reading a decree of this court,  
dated the tenth of *May*, in the twenty-fourth year of *Queen  
Elizabeth*, in the cause of *Kitchin v. Holme*; and also the answer  
in this cause, dated the twentieth of *November*, in the twenty-  
fifth

The cause ad-  
journd.

Further evidence  
read.



fifth year of the said queen ; another decree of this court, in the cause of *Bradshaw v. Clifton*, dated the seventeenth of November, in the thirty-first year of *Charles the First* ; a copy of the proposal of *J. Kitchen* for the purchase of part of the possessions of the monastery of *Cockersand* ; the particular made in consequence of such proposal, taken from the records in the augmentation office ; a decree of this court, made in the cause of *Lambert v. Cummin*, dated the twenty-first of November 1721 (a), it was ordered, that the cause should stand over to a future day for the judgment of the Court ; and the cause now standing in the paper of causes accordingly ;

TOWNLEY  
against  
TOMLINSON.

The cause again  
adjourned.

THE COURT ordered, that the bill, as against the defendants *J. Bennison*, clerk, *M. Alderson*, widow, *E. D...*, and *R. Hodgson*, be dismissed, with costs according to the course of the court ; and as it did not appear, nor had been made out by the proofs in the cause, that the lands in *Pilling* for which an account of tithes was prayed by the bill, were or are exempted or discharged from the payment of tithes when in the immediate or actual possession or occupation of the respective owners of the inheritance thereof, as was insisted on by the defendants the part owners of the said lands in their said answers to the bill, IT WAS FURTHER ORDERED, that the defendant *Tomlinson* and others do severally and respectively account with the plaintiff for a moiety of the tithes of the several titheable matters and things which yearly arose, renewed, or increased on the lands by them respectively occupied in the said township of *Pilling*, within the parish and rectory impropriate of *Garstang*, except of the tithes of milk, calves, and garden stuff ; and also for a moiety of *Easter offerings* during the time demanded by the bill, according to the manner of tithing the same respectively mentioned in the answers of the said defendants ; and that the defendant *John France* do also in like manner, account with the plaintiff for the value of a moiety of the tithes of the several titheable matters and things which yearly arose on the lands by him occupied within the said township of *Pilling*, other than on the lands by him rented of *R. Hesketh* in his answer named, during the time in the bill mentioned ; and that the defendant *J. Harrison* do, in the like manner, account with the plaintiff for the value of a moiety of the tithes of all corn and grain which yearly arose in and upon the lands by him occupied in *Pilling* aforesaid, during the time aforesaid. AND IT WAS FURTHER ORDERED, that the defendants *Tomlinson* and others do pay to the plaintiff her costs of this suit until the present time, to be taxed. The consideration of subsequent costs to be reserved till after the report,

The bill dismissed  
as against  
*Bennison* ;

and as the defendants had not  
proved that the  
lands in *Pilling*  
were exempted  
when in the actual  
occupation  
of the owners,

*Tomlinson* is decreed to pay  
tithes in kind  
for his lands,

excepting the  
tithes of *Hesketh's*  
*Farm*,

with costs.

(a) See vol. iii. page 215.



## DECREES IN TITHE CAUSES

TOWNLEY  
against  
TOMLINSON.

The deputy remembrance made his report, dated the first of July 1765; and upon reading the said decree and report, no exceptions having been taken thereto, IT WAS ORDERED, on the fourth of July 1765, that the said report be ratified and confirmed, with subsequent costs; and that the defendants do forthwith pay to the plaintiff the several sums reported due for the titheable matters and things demanded by the bill.

THE COURT FULL.

TRIN. TERM,  
3. GEO. 3.

THORPE against BENDLOWES.

Durham, 8th July 1762.

The rector of Houghton, in the county of Durham, claims the tithes of the hay cut, of young wheys depastured, and of coach horses fed on Masen's Close and Bridge End Close.

S. C. 3. Burn's  
E. L. 433.  
S.C. Rayn. 508.

THE bill stated, that the plaintiff, on or about the tenth of June 1725, was presented to the rectory of Houghton, in the county of Durham, and had thereby become entitled to take in kind all manner of tithes, both great and small, arising therein; that the defendant, since January 1755, had been occupier of divers lands and closes within the said parish, and particularly of Masen's Close and Bridge End Close; that he had yearly several titheable matters growing thereon; that he had yearly depastured thereon, or on part thereof, barren and unprofitable cattle, as well of his own as of other persons, taken in to agist for hire, particularly divers young wheys and other young cattle, which he had sold; that he had also grass growing on his pasture lands, which he had cut and made into hay, but that he had never set out or paid the plaintiff the tithes of the same; that in 1754 he had accounted with the plaintiff for all his titheable matters then in arrear, and had at that time, and for several years before, paid to him one shilling and sixpence in the pound rent for his agistment tithe and the renewals of his pasture lands; but that he afterwards pretended that no tithes were due for the same, except some small *modus*; that he also pretended that he had not agisted upon his lands any other barren and unprofitable cattle than certain horses which he kept for the use of his coach, and had not used for labour, profit, or sale; and that therefore no tithe was due for the same. But the bill charged, that as such horses were not kept and used for pleasure only, but were, during the same time, employed by the defendant in leading and carrying coals from the pits to Houghton, and also in drawing manure from divers places out of Houghton parish to lands belonging to the defendant within the parish and also in drawing lime, timber, bricks, and other materials used by the defendant in buildings, and in other work and labour whereby he made great profit, that he, the plaintiff, was well entitled to tithe agistment of all such horses, or to some reasonable satisfaction for the same; but which the defendant had refused to make. The bill therefore prayed, that the defendant might be decreed

to

to pay to the plaintiff all and every the tithes aforesaid subtracted by him, or the just value thereof, that had, in every year since the first of *January* 1755, become justly due and payable from him.

THOMAS  
against  
BENDLOWES.

The defendant admitted, that the plaintiff was lawful rector, and entitled to all manner of tithes in kind within the parish, or to a reasonable satisfaction in money for the same, according to the custom of paying tithes therein; that about eleven years ago he came to reside at *Houghton*, and had ever since been an inhabitant thereof; that before, and ever since the first of *January* 1755, he had been, and then was, occupier of *Mason's Close* and *Bridge End Close*, which he used alternately either in meadow or pasture, and had depastured several horses and cattle thereon, viz. that he had, for about twelve or thirteen weeks, depastured therein at nights saddle and coach horses; but he averred, that the said horses were hackney geldings and horses kept for his pleasure, to draw his coach, and for himself and servants to ride upon; that they were not used for hire, or bought or bred for sale; and he submitted, that the plaintiff was not entitled to tithe for the depasturing of such saddle and coach horses, or for any barren and unprofitable cattle so kept for his pleasure, and not for profit or sale. He further said, that he had depastured a milch cow and a one year old whey upon *Mason's Close*; that, by the immemorial custom of the parish, the parishioners paid, and the parson received, three halfpence for the yearly renewal, and in full satisfaction of the tithe agistment of each milch cow under the number of five; that no tithe was paid for the agistment of any young wheys bred and depastured in the parish until they had calves, when they were reckoned milch cows; and that the parishioners then paid the parson three halfpence for the yearly renewal, and in full satisfaction of the tithe agistment of each milch cow under five; that, according to such custom, the plaintiff had received of the defendant three halfpence for the said milch cow for the year 1755; and he insisted, that no more tithe was due to the plaintiff in that year for depasturing the said cow and whey as aforesaid. He also said, that in the same year he had taken in to agist one milch cow for about eleven or twelve weeks; and that he believed the owner thereof had paid to the plaintiff three halfpence for the yearly renewal of the tithe agistment of such cow, according to the custom. He further said, that in the said year *Bridge End Close* was in meadow, and that the plaintiff took the tithe hay thereof in kind; and that in the year 1756 *Mason's Close* was in meadow, of which he had also taken the tithe hay in kind. He also said, that in the year 1755, wanting straw to make ropes for the covering a hay-stack, he cut a small quantity of coarse grass in *Mason's Croft*, for which he tendered the plaintiff two shillings; and that in 1759 he had also cut some

The defendant said, that he depastured his saddle horses and coach horses at nights, for about twelve weeks, on the said closes; that the said horses were kept for his pleasure, to ride on, and to draw his coach, and not for hire or sale; but that they were occasionally employed to carry coals, to draw manure, &c. from the parish of *Houghton* to lands in the adjoining parish of *Darlington*.

that he had cut no hay, except from some coarse grass for the purposes of thatching ricks and making hay-bunds.

THORPE  
against  
BENDLOWES.

grafs to top a stack with, which he made into hay, and set out the tithes thereof; both of which the plaintiff refused to accept; and he set forth the titheable matters and things he had on the said closes the following years; and insisted on the said custom of three halfpence; and that no tithe agistment was due for his coach and saddle horses, though he admitted he had occasionally employed them to fetch coals and draw manure, &c. (a).

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides, no evidence being read;

The tithes for depasturing the young wheys, the saddle and coach horses, and other barren and unprofitable cattle, decreed.

The bill dismissed as to the hay.

THE COURT ordered the deputy remembrancer to take an account of what was due to the plaintiff from the defendant for the tithe agistment of the wheys in the pleadings mentioned to have been agisted by the defendant; of the coach horses and other barren and unprofitable cattle depastured by him during the time demanded by the bill; that the bill be dismissed as to the demand of tithe hay mowed and used in the manner and for the purposes in the defendant's answer mentioned, but without costs; that the defendant do pay the plaintiff his costs at this time, to be taxed; and that further directions be reserved till the coming in of the report.

The parties die, and the suit is revived against their representatives.

In the year 1766 the plaintiff died, and his son filed his *bill of revivor* and *supplemental bill* against the defendant, and revived the suit; and soon afterwards the defendant died, whereby the suit became again abated, and a second *bill of revivor* was filed in 1769 against the widow and executrix of the defendant; to which she appeared and put in her answer, and admitted the former proceedings, but did not admit assets sufficient; and the said suit and proceedings were again revived.

The deputy makes his report, which is confirmed.

The deputy remembrancer made his report, dated the seventh of *December* 1772: and on the twenty-first of *December* 1772, upon hearing counsel for the plaintiff, and none appearing for the defendant, and no exceptions having been taken to the report, the report was ratified and confirmed, and the said defendant ordered to pay to the plaintiff the sum reported due for the tithes and costs, and also his subsequent costs of this suit, to be taxed, viz. for the agistment tithes of the wheys agisted by him, and also for the coach horses and other barren and unprofitable cattle depastured by him, one pound, nineteen shil-

(a) It is said by Mr. Burn, that it was proved in the cause, that the defendant made a profit of the horses, by employing them to fetch his coals at ten miles distance out of the parish,

and in loading manure, bricks, and wood, from the parish of *Houghton* to his lands in the adjoining parish of *Darlington*.

lings



lings, and sevenpence ; and for his costs taxed one hundred and forty-six pounds, eight shillings, and fourpence.

SMYTHE, *Chief Baron.*

ADAMS, *Baron.*

PERROTT, *Baron.*

EYRE, *Baron.*

THORPE  
against  
BENDLOWES.

HUGHES *against* LADY HUMBLE.

Surry, 14th July 1762.

TRIN. TERM,  
2. GEO. 3.

THE plaintiff, as rector of the parish of *Saint Olave*, in *Southwark*, in the county of *Surry*, stated, that the parish of *Saint Olave* is an ancient parish and rectory ; that the profits arising therefrom to the rector thereof are, and from time immemorial had been, certain ancient pecuniary payments or sums of money ; that the greater part of such profits arise from a sum paid for each house by the tenant or occupier thereof ; that others of the said payments are sums in gross ; that each of the said payments had, for many years, been made by divers owners of several entire estates within the parish respectively ; that each of such estates consisted of many houses in the tenures or occupations of several under tenants, some of them by virtue of leases for long terms of years, and others only as tenants from year to year or otherwise ; that all the said payments had been usually paid and collected quarterly ; that they were generally called *tithes*, and were the only provision for the maintenance of the rector there, other than *Easter offerings* and *surplice fees*, which were uncertain and trifling ; that in *December 1750* the plaintiff was duly presented to the said rectory and parish church, and having duly performed the cure there by himself or his curate, had thereby become entitled to all such dues, duties, payments, and sums of money, which had been paid to and received by his predecessors ; that he ought to have received the same accordingly ; that the defendant, during the said time, had been owner of a considerable estate lying in and about *Glean Alley*, within the said parish, of the yearly value of three hundred and sixty-three pounds ; that the said estate consisted of a number of houses, with out-buildings and other appurtenances thereto belonging ; that some of them were let for a long term of years, and others to tenants at will, or from year to year, under certain yearly improved rents ; that for all the estate there had been, for a number of years, yearly paid by the owners thereof, to the rector, the sum of twenty pounds, by quarterly payments, on the four feasts ; but that the defendant now refused to pay the same, although she had been often applied to for that purpose ; and that the same being a very ancient payment had been regularly paid from the year 1689 by the owners of the said estate. The bill therefore prayed, that the defendant might be compelled

The rector of *St. Olave's*, in *Southwark*, is entitled to 20l. a-year from the owner of a certain estate lying in or about *Glean Alley*, in the said parish, in lieu of the tithes thereof.



HUGHES  
against  
LADY  
HUMBLE.

compelled to pay to the plaintiff all the arrears of the said yearly sum of twenty pounds which had incurred from *Lady Day* 1750; and that the payments of the said yearly sum might be established for the future.

The defendant admitted, that the parish of *Saint Olave* was an ancient parish and rectory; that some of the profits arising therefrom to the rector for time immemorial had been certain ancient pecuniary payments or sums of money; that the greater parts of such payments were certain sums paid for several of the houses therein by the tenants of such houses, for and in lieu of tithes, quarterly; but she denied, that the tenant or occupier of each house had immemorially paid any sum of money whatever for or in respect of such house, in lieu of tithes, or on account thereof; and said, that many occupiers of houses therein do not pay any sum or sums of money whatsoever to the rector for tithes in respect of their houses, nor have the owners of such houses paid any sum or sums of money to the rector in the gross with other houses within the said parish, or otherwise howsoever, in lieu of tithes of such houses; and that the several owners and others within the parish, do not, nor ever have paid any yearly or other sum or sums of money whatsoever to the rector of the said parish, for or under the denomination of tithes; but that time immemorial it had been, and still was the general usage and custom of the parish for the several and respective tenants or occupiers of houses there to pay a sum certain to the rector for and in respect of their houses, in the name or under the denomination of *tithes*; and that when the said houses were uninhabited, there was nothing due or paid to the rector. She admitted, that the plaintiff was, in *December* 1750, instituted and inducted into the rectory, and had ever since been rector thereof; that she had ever since, and before that time, been owner in fee simple of a considerable estate lying in and about *Glean Alley*, within the said parish; that it consisted of a great number of houses and out-buildings and other appurtenances; that some of the said houses were heretofore let on building or repairing leases for a long term of years as yet unexpired, under reserved rents, and in the occupation of under-tenants; that the said premises had never been, to her knowledge, leased free from payment of tithes; that others of the said houses were let to tenants at will or from year to year; that the value of the said estate was formerly of six hundred pounds a-year; but that it was now greatly reduced in the yearly value; that the plaintiff's claim of twenty pounds a-year was not grounded on any custom, or the usage of the parish; and that the owners of houses within the said parish ought not, of common right, to pay any sum of money to the rector in lieu of tithes for their estates. The defendant therefore insisted, that the plaintiff, as rector, was not entitled to the twenty pounds a-year

# DURING THE REIGN OF GEORGE THE THIRD.

43

a-year from her as owner of the said estate ; and that if it was due, and should appear that the same had been paid, it was not so paid of right, but in ease of the tenants. She admitted, that the plaintiff had applied to her for the same, and that she had refused it ; and she submitted to the Court, that if there had been such ancient payments made by the former owners of the said estate, the rector ought to make a proportionable abatement for the decrease of the yearly value thereof.

HUGHES  
against  
LADY  
HUMBLE,

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on both sides ; and upon hearing counsel ; and reading out of several books, entitled, " The Books of " Tithes in the Parish of Saint Olave, in Southwark," collected by different rectors, beginning 1690, and ending about 1750 ; several leases signed by the *Humble* family ; and on full debate ;

THE COURT ordered the defendant to account with, satisfy, and pay to the plaintiff, the said sum of twenty pounds a-year for the tithes of the premises in question during the time demanded by the bill, together with his costs taxed.

In pursuance of the said decree, the deputy made his report, dated the twenty-first of *February* 1763 ; and on the twenty-fourth, upon reading the report and decree, no exceptions having been taken thereto, the report was ratified and confirmed, and the defendant ordered to pay to the plaintiff three hundred and forty-one pounds, eleven shillings, and fourpence, so reported due.

PARKER, *Chief Baron*,  
SMYTHE, *Baron*.  
ADAMS, *Baron*.

BREARY against MANBY.

*Yorkshire*, 8th November 1762.

Mich. Term,  
3. Geo. 3.

THE bill stated, that the plaintiff, in *March* 1735, was lawfully instituted and inducted into the rectory and parish-church of *Middleton upon the Wealds*, in the county of *York*, and thereby become well entitled to all the tithes of corn, grain, hay, wool, lambs, and all other tithes, as well great as small, offerings, ecclesiastical dues and duties, yearly arising therein ; that the defendant, from *May* 1736, had been, and still was, the occupier of a piece of ground, called *the Twelve Oxgangs*, lying in flatts, and of two closes, called *Swang Close* and *South Close* ; of several orchards, gardens, and yards ; and that he had several titheable things thereon, the tithes whereof he had refused to pay

The rector of *Middleton*, in the *Wealds* of *Yorkshire*, claims the tithes of the *Twelve Oxgangs*, and of *Swang Close* and *South Close*.

S. C. 3. Burn.  
E. L. 397.  
S.C. Rayn. 510.

The

BREARY  
against  
MANBY.

The defendant,  
a layman, pre-  
scribes in non  
obstante for the  
said oxgangs and  
closes.

The defendant admitted, that the plaintiff was rector, and lawfully entitled to all manner of tithes, both great and small, yearly arising therein, which had been usually paid within the said parish; that from the first of *May* 1736 he had been, and then was, occupier of a capital messuage, and several arable lands, closes, or parcels of meadow and pasture ground, orchards, gardens, and yards; that he also occupied *Twelve Oxgangs* of land in flats, with broad balks on each side, in the several fields of *Middleton*, together with two closes, parcel of the said *Twelve Oxgangs*, called *South Close* and *Swang Close*, and several other lands and grounds, as mentioned in his answer; but he said, that the *Twelve Oxgangs*, *Swang Close* and *South Close* as part thereof, were, and had ever been, from time to time, time out of mind, held, occupied, and enjoyed, by the respective owners thereof and their respective tenants and farmers, freed and discharged from the payment of any tithes whatsoever; but that he being only tenant thereof, and not having any ancient records or deeds relating to the same, could not set forth his exemption, but hoped that his landlord would when called upon. He admitted, that during the several years he had occupied them he had growing thereon corn, grain, and hay; but insisted, that he ought not to set forth the particular kinds of each in the said years, by reason of such exemption; and he denied that he had ever admitted that tithes were payable for the said *Twelve Oxgangs*.

The plaintiff replied; the defendant rejoined; and witnesses were examined in the cause; and upon hearing counsel; and reading several depositions and the answer; and upon full debate of the matter;

The tithes de-  
creed.

THE COURT ordered the defendant to account with the plaintiff for the tithes of all his corn and grain arising on the *Twelve Oxgangs* and two closes called *Swang Close* and *South Close*, during the time demanded by the bill, and for the small tithes arising upon any of the said defendant's lands and grounds by him occupied in the parish during the said time.

PARKER, Chief Baron.  
ADAMS, Baron.  
GOULD, Baron.

HILARY TERM  
3. GEO. 3.

THORNTON against LUMLEY.

Durham, 21st February 1763.

The bill states,  
that the deanery  
of *Chester* con-  
sisted of a dean  
and seven pre-  
bends;

THE bill stated, that about the year 1286 the late deanery of *Chester*, otherwise *Chester in le Street*, was founded by *Anthony*, then *Bishop of Durham*; that he, by his charter of foundation, ordained that the church of *Chester* should



should from thenceforth be a collegiate church, with one dean and seven prebends; that he made distinct provision for the dean and each of the prebendaries, and particularly directed, that to the first prebend, being the prebend of *Lumley*, there should belong the predial tithes universal of *Great Lumley*, *Little Lumley*, and *Woodsend*, and the tithes of the coal mines; that, by virtue thereof, the said prebendary had always received such tithes until the dissolution of the said deanery and prebends in the first year of *Edward the Sixth*; that they were then dissolved by act of parliament, and that the same became vested in THE CROWN; that *Queen Elizabeth* being seised thereof, did, by her letters patent dated the ninth of *February*, in the thirtieth year of her reign, for the consideration therein mentioned, give and grant to *E. Downing* and *M. Doding* all her tithes of grain yearly growing, &c. within the said parish of *Chester*, and to the late prebends of *Lumley*, &c. belonging, and a messuage and lands therein mentioned, at *Kirkthorne*, in the county of *York*, to hold and enjoy all the rights and privileges which had been held or enjoyed in the premises; that she further gave and granted to them and their heirs, &c. all the premises, with the appurtenances, to hold to them, &c. at an yearly rent of one hundred and fourteen pounds, and six pounds, thirteen shillings, and fourpence for the curate of *Lumley*, and ten pounds for the salary of the curate of *Chester*; that by divers mesne conveyances, the plaintiff *Thornton* was, in the year 1745, and had ever since been seised in fee of one full moiety of all the tithes of corn and grain yearly growing, &c. in *Great Lumley*, *Little Lumley*, and *Woodsend*, which were granted as aforesaid; that by virtue of many other mesne conveyances, the plaintiff *Lambton's* late brother, on the fifth of *June* 1756, became seised in fee in the other moiety; that he continued seised thereof until his death in the year 1758; and that the said plaintiff then, by the will of his said brother, became seised thereof; and therefore that all the estate and interest which they had was vested in the said plaintiffs in equal moieties. The bill then stated, that all or the greater part of the lands in *Little Lumley* were, at the time of the said grant, and for many years after, paled in and used as a park; but that between fifty and sixty years ago, the same were disparked and inclosed, and all, or great part thereof, converted into tillage, and having continued so ever since was become liable to the payment of tithes of corn and grain to the plaintiffs, and those under whom they claim; that the defendant *Storey* since the year 1741 had occupied several pieces of land in *Little Lumley*, which were formerly used as a park, and since disparked and inclosed as aforesaid, as tenant to the defendant *Lumley*; that he had yearly sowed the same with wheat, and other corn and grain, and had cut the same, and carried it away, without setting out any tithe thereof. The bill further stated, that the defendant *Hornby* had occupied other parts thereof, as tenant to the

THORNTON  
against  
LUMLEY.

that one of them, the prebendary of *Lumley*, was endowed with the predial tithes of *Great Lumley*, *Little Lumley*, and *Woodsend*; that the said deanery was dissolved, and vested in the crown by *Edward the Sixth*; that *Queen Elizabeth* granted the said tithes, and the lands called *Kirkthorne*, to *E. Downing*;

that one moiety thereof had come to the plaintiff *James Thornton*;

that the other moiety had come to the plaintiff *Lambton*;

that they still held the same in equal moieties; that the lands in *Little Lumley*, which at the time of the grant was a park, had been converted into arable land;

that the defendant *Storey* now occupied part of the said lands, as tenant to *Lumley*;

that *Hornby* occupied other parts, as tenant to *Lumley*;



THORNTON  
against  
LUMLEY.

that no other  
grant than that  
before stated  
had been made  
by the crown of  
the said lands ;

and prays, that  
*Storey* and *Horn-  
by* may account  
for the tithes of  
corn and grain ;  
and the plain-  
tiffs be quieted  
in the enjoy-  
ment of the said  
tithes.

defendant *Lumley* ; that they, the said plaintiffs, ought to have received the tithes thereof from them in moieties, but that they had refused to set out the said tithes, or to make them any satisfaction for the same. The plaintiffs further charged, that no grant whatsoever of the said tithes had been made by THE CROWN, except as aforesaid to the said *Downing* and *Doding* ; that they claimed under the said grant ; and that the lands in *Little Lumley* or *Lumley Park* were not legally exempt from the payment of tithes, nor subject to any ancient *modus*, but that they, the plaintiffs, were well entitled to the tithes of corn and grain thereof, and to have them set out annually, and to take them away to their own use, and also to have an account of the tithes thereof which had been withheld by the defendants from them. The bill therefore prayed, that the defendants *Storey* and *Hornby* might account with and make the plaintiffs a satisfaction for their respective shares of the tithes of corn and grain of the lands of *Little Lumley*, otherwise *Lumley Park*, so by them held and occupied as aforesaid, during the time they had occupied the same ; that the plaintiffs might be quieted in the enjoyment of all the tithes of corn and grain arising within the said lands of *Little Lumley* ; and that the defendant *Lambton* might admit the will of his said brother ; or that the testimony of the witnesses thereto might be perpetuated, and the same declared to be well proved.

The defendant  
*Lumley* puts the  
plaintiffs to the  
proof of the se-  
veral allegations  
contained in the  
bill respecting  
their title to the  
premises ;

The defendant *Lumley* said, that it might be true that in the year 1286 the late deanery and prebends might be founded by *Anthony Beck*, then *Bishop of Durham* ; that the said bishop might, by such charter or foundation, ordain, that the said church of *Chester* should be a collegiate church ; that there should be a dean and seven prebends therein ; that he might make distinct provisions for them, and distinguish what should belong to each of them ; and that to the prebend of *Lumley* there should belong the predial tithes universal of *Great Lumley*, *Little Lumley*, and *Woodsend*, and also the tithes of the coal mines ; but he left the plaintiffs to prove those allegations, and also that the incumbent for the time being had enjoyed the same to the time of the dissolution of the said deanery and prebends ; that the said deanery continued under such ordination till the reign of *Edward the Sixth* ; that it was then dissolved, and vested in the crown ; that *Queen Elizabeth*, by letters patents dated the ninth of *February*, in the thirtieth year of her reign, granted to the said *Downing* and *Doding* all the tithes of corn and grain from time to time growing in the parish of *Chester* aforesaid, or in the said late prebends of *Lumley*, &c. or any of them, belonging, and a messuage and lands therein mentioned at *Kirkthorne* aforesaid ; and denied that he knew how the said plaintiffs became seised in moieties of the tithes of corn and grain, as stated in the bill, in *Little Lumley* aforesaid ; but he

denied that they  
became seised  
in moieties  
in the manner  
alleged ;

said, that he believed that since the date of the said grant the plaintiffs, or those under whom they claimed, might, without interruption, have received the tithes of corn and grain of *Great Lumley*; and that part of the lands of *Little Lumley* were, at the time of the said grant and for many years after, railed and used as a park, but not so lately, as mentioned in the bill; that it had been let to tenants upon lease, and used in tillage, ever since it was disparked; and that part thereof had always been in corn; but he insisted, that no tithe whatsoever, great or small, had ever been paid or demanded for any part thereof, except once, in the year 1718, by *Winstrip*, under whom the plaintiffs derived their title; that *Winstrip* then demanded tithe corn of *Little Lumley*; that the same was refused to be paid by the owner thereof; and that tithes were never afterwards demanded till lately by the plaintiffs: and he said, that a prescriptive rent or *modus* of ten shillings a-year was then, and had been always paid by him, and those under whom he claimed, to the person in the possession of the prebend of *Lumley* for *Woodstone House*, called in the charter of foundation *Woodfend*, which is part of *Little Lumley*; that the said rent or *modus* of ten shillings was then paid in moieties to the plaintiffs; and that the same was paid in lieu of the tithes of corn arising in all the lands in *Little Lumley*, though the receipt given for the same was mentioned to be given only for *Woodstone House*. He further said, that the township of *Little Lumley*, which included the *Castle* and the lands in the *Old Park*, was distinct and separate from the township of *Great Lumley*; that it had never paid any parochial cesses to *Great Lumley* or *Chester*, nor any tithes of any kind; but that it paid its taxes and maintained its own poor separately. He admitted, that from the year 1739 he had been seised of all the lands in *Little Lumley* which were formerly used as a park; and insisted, that the constant, uniform, and immemorial non-payment of tithes for the said township of *Little Lumley* was a full and sufficient evidence that the said lands were not liable to the payment of tithes of corn and grain, or any other tithe whatsoever.

The defendant *Hornby* said to the same effect as the defendant *Lumley* had said; and also, that his farm lay within the lordship of *Lumley*, in *Little Lumley*, otherwise *Lumley Park*; that he had possessed the same for several years past; that part was in tillage; that two-thirds thereof were yearly in corn; that the other third was in fallow; and that when it was sown, it was sown with wheat, rye, oats, and pease; that the corn tithe in the neighbourhood had, for some years, been valued at four shillings an acre for wheat, and two shillings and sixpence an acre for oats; but that, for the reasons aforesaid, he had not set out his tithes.

THORNTON  
against  
LUMLEY.

believes that  
they had received  
the coentithes  
of *Great Lum-*  
*ley*;

and insists, that  
a *modus* of 10s.  
a-year is payable  
to the person in  
possession of the  
prebend of *Lum-*  
*ley*, in lieu of the  
tithes of *Woodf-*  
*end* and all other  
lands in *Little*  
*Lumley*.

The defendant  
*Hornby* puts in  
the like answer  
as to *Lumley*  
*Park*.

The

THORNTON  
against  
LUMLEY.

The defendant Storey puts in the like answer as to *White Cross House* and *Houghton Gate* in *Little Lumley*.

The defendant Storey said to the same effect as the defendant *Hornby*, only that he did not say that the ten shillings a-year was taken in lieu of the corn tithe for all *Little Lumley*; and also that he had been tenant of *White Cross House*, in *Little Lumley*, otherwise *Lumley Park*, for several years past, and also of *Houghton Gate Farm*; and he set forth the titheable matters he had thereon, and what was in tillage, pasture, and meadow; but said, that he had never kept any account of the yearly crops of his farms, for the reasons aforesaid.

The defendant Lambton admits the plaintiffs titles.

The defendant Lambton, by his answer and disclaimer, admitted, that his brother *Hedworth Lambton*, by his will duly executed, had devised all his lands to the plaintiff Lambton and his heirs, and that the said plaintiff thereby became entitled to all such right and interest in the tithes and premises in the bill mentioned as his brother was entitled to at his death; and disclaimed all right, title, and interest, of, in, and to the said tithes.

The plaintiff Thornton and the defendant Lambton die, and the cause is revived against their representatives.

The plaintiffs replied to the answers of the defendants *Lumley*, *Hornby*, and *Storey*; and they rejoined; but before any further proceedings were had, the plaintiff *J. Thornton* and the defendant *Lambton* died.

The plaintiff Lambton filed his supplemental bill and bill of revivor against *Mr. Thornton* and several others defendants, being the heirs at law, devisees, and executors of the said *J. Thornton*, who appeared, and put in their answers; and the cause being duly revived pursuant to order; and several witnesses being examined on both sides; and publication being duly past;

The evidence read.

THE COURT, which was full, heard counsel for all parties, and read the following evidence, viz. the answer of the defendant *Lumley*; indentures of lease and release, dated the twentieth and twenty-first of April 1676, signed by *Thomas, Lord Windsor*, and several others; an indenture, dated the twentieth of June 1676, signed *W. Dodson*; indentures of lease and release, dated the twentieth and twenty-first of May 1678, signed by *Sir Robert Markham* and *W. Dodson*; an exemplification of a fine, dated the fifteenth of December, in the thirty-fifth year of *Charles the Second*, between *G. Winsbip*, plaintiff, and *Sir Robert Markham* and *William Dobson*; an indenture, dated the fifteenth of April 1684, signed *G. Winsbip, senior*, and *junior*, being a conveyance to *W. Winsbip* and his heirs; an indenture, dated the second of October 1716, signed by *W. Winsbip* and others; an indenture, dated the third of May 1744, signed by *W. Winsbip* and another; an office copy of a fine levied in the court of pleas at *Durham*, between *W. Robinson*, plaintiff, and *W. Winsbip*, defendant; indentures of lease and release, dated the fifth and sixth of December 1744, signed by



*Hannab Diagina*; several other indentures of leases and releases; an office copy of a fine, dated the thirtieth of *March*, in the twenty-third year of *George the Second*, levied in the court of pleas at *Durham*, between *H. Lambton*, plaintiff, and *W. Winslip* and others, defendants; the probate of the will of *Hedworth Lambton*, deceased; an indenture, dated the twenty-third of *May* 1743, inrolled in chancery, executed by *James Thornton*; an exemplification of a recovery under the seal of the court of pleas at *Durham*, *N. Burton* demandant, *G. Johnson* tenant, and *James Thornton* vouchee, dated the eighteenth of *July* 1743; the last will of *James Thornton*, dated the twenty-ninth of *May* 1761; a copy of an *inspeximus*, dated the twelfth of *June*, in the twentieth year of *Edward the First*, of the charter of *Anthony, Bishop of Durham*, dated the fifth of the *Ides of November*, in 1286; a copy of a grant, dated the ninth of *February*, in the thirtieth year of *Queen Elizabeth*, to *E. Downing* and *M. Doding*; a copy of the ministers accounts of the revenues of augmentations of the crown, in the second year of *Edward the Sixth*; a copy of a roll of particulars for the sale of fee farm rents in the county of *Durham*, in the time of the late civil wars; and the proofs taken in the cause;

THORNTON  
against  
LUMLEY.

THE COURT thereupon ordered the bill, as against the defendants *M. Thornton* and others, to be dismissed. But the defendant *Lumley* being in court, and consenting that his tenants, the defendants *Hornsey* and *Storey*, should account with and pay to the executors of the plaintiff *James Thornton* a moiety of the tithes of corn and grain arising and growing within the township of *Little Lumley* in the pleadings mentioned, and taken and possessed by them for six years before the filing of the original bill, in manner hereinafter mentioned, the bill was dismissed without costs.

The defendant *Lumley* undertakes to pay a moiety of the tithes of *Little Lumley* to the representatives of *Thornton*.

THE COURT also ordered, that so much of the bill as sought quiet enjoyment of the tithes in the said bill mentioned, be dismissed without costs.

The bill dismissed so far as it seeks quiet enjoyment of the said tithes.

THE COURT also ordered the defendants *Hornsey* and *Storey* to account for all the tithes of corn and grain which had arisen in the said township of *Little Lumley*, and by them respectively taken and possessed from the fifth day of *June* 1756.

*Hornsey* and *Storey* decreed to account.

THE COURT further ordered the said defendants to pay one moiety of what should appear to be coming due upon the said account to the said plaintiff, together with his costs of this suit to be taxed; and the other moiety of what should appear to be due of the said tithes to the defendants, the executors of the said *James Thornton*; and also so much more as a moiety of the said tithes for 1756 and 1757 should amount to in respect of their moiety thereof for 1754 and 1755, the

The defendants ordered to pay a moiety of the said tithes to the respective plaintiffs.



THORNTON  
against  
LUMLEY.

counsel for the said executors consenting not to bring any bill in respect thereof; and this is to be without costs.

HILARY TERM  
3. GEO. 3.

WOODCOCK against IREMONGER.

Southampton, 22d February 1763.

The prebendary of *Middleton*, in *Hampshire*, is entitled to the tithes of the parish, excepting certain tithes with which the vicar is endowed; but the estate called *Foreton Farm* and the woodland called *Harewood*, are tithe free, as having been formerly parcel of the possessions of the abbey of *Wherwell*.

THE bill stated, that *Dr. Griffith*, prebendary of *Middleton*, being, in right of his prebend, seised of all the tithes arising within the parish of *Middleton*, in the county of *Hants* (except certain small tithes with which the vicar was endowed), by indenture dated the third of *May* 1759, made between him and the plaintiffs, demised to them for three lives all that prebend of *Middleton*, with the tithes, tenths, and other the lands, &c. and all his lands, hereditaments, and tithes, in the parish of *Middleton* and *Wherwell*, to hold, &c.; that they, by virtue thereof, became entitled to all tithes arising therein, particularly to the tithe of wood under twenty years growth, and of the bark thereof; that the defendant at that time held, in the parish of *Middleton*, several hundred acres of woodland, called *Harewood*; that he had, since the said lease was granted, felled underwood and coppice wood under twenty years growth, and had barked and sold the same, but had refused to set out the tithes thereof, or to make them any satisfaction for the same; that the tithe of wood under twenty years growth was due of common right, and ought to be paid; but that the defendant pretended an exemption from tithes, on pretence that the said wood had never paid tithes; but the plaintiff, on the contrary, insisted, that non-payment of tithe was no evidence of such exemption, nor any bar of the prebendary's right to such tithes; and that the said lands and grounds had always been subject to the payment of great tithes to the prebendary of *Middleton*, which comprehended the tithes of wood and bark, and of small tithes to the vicar of the parish; and that the defendant had always paid tithes in kind, or some *modus* in lieu thereof, for every species of corn, grain, and hay, and other titheable article, to the prebendary of *Middleton*, or to his lessee. The plaintiffs further charged, that there were no lands in *Long Parish* in the defendant's possession that had formerly been part of the possessions of the monastery of *Wherwell* but what had always paid tithe in kind, or some *modus* for the same; that the defendant admitted that such payments had been made, and yet pretended that the said lands were exempt from the payment of the tithes of wood and bark; but the plaintiffs insisted, that the tithes of wood being due of common right, no claim of exemption ought to be admitted but where such exemption appeared from deeds, &c.; and that there was never any charter, grant, &c. by which the premises in the defendant's possession had ever been exempted from the payment of the tithes of wood or bark. The bill

further

further stated, that *Foreton Farm*, in the defendant's or his tenant's possession, was parcel of the said abbey, and formerly part of *Harewood*, and was, about forty years ago, called *Foreton Heath*; that it had never before been cultivated or converted into tillage, but had laid surrounded by *Harewood*, and was covered with furze, &c. and clumps of trees; that previous to the said wood grounds being converted into tillage, the tenants or inhabitants of the said common used to turn sheep and other cattle to feed thereon; and that during all such times the owners thereof had always paid to the vicar of *Middleton* the tithes of wool, lambs, one shilling a-year as tithe for *cow white* or milk, and sixpence for the tithe of each calf, for their depasturage thereon, or as a *modus* or composition for the same; that about forty years ago, *R. Widmore*, the then owner of the said common, caused the bushes and trees to be grubbed up, the land to be inclosed and converted into tillage; and that the owner thereof, or his tenant, had paid tithes for the same to the prebendary of *Middleton* and the vicar of the parish according to the respective rights. The bill further stated, that previous to the defendant's title to the said estate, and afterwards, *Harewood* had been kept open and uninclosed, except where any falls of timber had been made; that upon such falls being made, the parts so felled were inclosed with a fence for seven years, in order to prevent the cattle from destroying the young shoots, and that at the end of the said seven years the said inclosures were thrown open, and the tenants and inhabitants, not only of the parish of *Middleton* but of other parishes and tithings where the said wood extended itself, were used (previous to the defendant's inclosing the said wood) to turn their cattle into the said wood to feed; that during that time the owners of such cattle always paid tithe of wool to the prebendary of *Middleton*, the tithes of the lambs of such sheep, one shilling a-year for the tithe of *cow white* or milk, and sixpence for the tithe of each calf, to the vicar of the parish; that the said payments had been discontinued for some years past, on account only of the defendant having inclosed the said woods in general, and thereby abridged the persons entitled to such depasturage of their customary privileges; that the said payments entirely destroyed the pretences set up by the defendant to an exemption from the payment of tithe, and was an evidence that such exemption did not extend to the lands upon which such wood grew. The bill therefore prayed, that the defendant might account with the plaintiffs for the tithe of all wood under twenty years growth cut or felled by him within the said prebend and the titheable places thereof since the execution of the said lease, and also the tithe of bark.

The defendant admitted the lease to the plaintiffs, as stated in the bill; and that, by virtue thereof, they had become entitled to

E 2

receive

Woodcock  
against  
Izemonger.

Woodcock  
against  
TARMONGERS.

receive such of the said tithes arising within the prebend which were due to the prebendary of *Middleton*; but denied, to their knowledge, that tithe of wood or bark was due of common right; but that if it was, they averred, that they had never heard of any tithe being claimed by the said prebendary or his lessees in *Wherwell* parish, or that the said prebendary had any right in the said parish, except a small cottage and the cut only of two acres of meadow land. He further said, that he neither admitted or believed that the plaintiffs became, by virtue of the said lease, entitled to the tithe of all wood and bark arising within the said prebend; and insisted, that by the statute 31. *Hen. 8.* entitled, "An Act for the Dissolution of Abbies and Monasteries," they were exempt from the payment of tithes; for that amongst other religious houses which were dissolved by the said act the abbey of *Wherwell* was one, the same being a house of very ancient foundation, and possessed of many manors, lands, woods, tenements, and hereditaments, and many rights and privileges in many parts of the kingdom, as appeared by *Doomsday Book*; that it also appeared, by writings of great antiquity, that the abbesses of the said abbey were, in the year 1228, possessed of a considerable part of certain woodlands, anciently called *Harwood*, of which wood the tithes in question were part; that the said abbey was one of the greater abbies, being above the yearly value of two hundred pounds, and became vested in the crown in pursuance of the said act, as appeared by a record in the court of augmentations; that the revenues and possessions of the said abbey became vested in the said king and his heirs and successors; that by virtue of the said act, his said majesty, by letters patent dated the twenty-fourth of *March*, in the thirty-first year of his reign, granted to *Sir Thomas West, Lord De la Warr*, and his wife, the site, circuit, and precinct of the late monastery of *Wherwell*, and also the prebend of *Good*, late parcel of the possessions of the said monastery, and the advowson of the parish church of *Wherwell* and the appurtenances, and also the manors of *Wherwell*, &c.; and amongst many other lands, &c. all those woods and underwoods in *Wherwell*, &c. to hold to them, &c. for ever, as therein mentioned; that the said grantee afterwards conveyed them to *E. Boulter*; that they were by him devised to *Sir J. Fryer, Bart.* who died seised thereof in fee, leaving three daughters; that the defendant having intermarried with the youngest daughter, he became, by virtue of a settlement on the said marriage, entitled to one third of the said woods and premises for his life; and that having purchased the other two-thirds, he had become a purchaser of the whole premises, and had ever since enjoyed the same, and particularly the woods in question, exempt or discharged from the payment of tithes, and had always relied on such exemption, having paid a consideration for the same; and he insisted on the same for the said woods. He

admitted,



admitted, that he had felled great quantities of underwood and coppice wood in *Middleton* which were under twenty years growth, and had sold the same; but said, that he had never barked any part of the coppice wood: and he submitted that the plaintiffs were not entitled to the tithes of either the said wood or bark, nor to a discovery of the same. He also admitted, that he had paid tithes of corn and other tithes to the prebendary of *Middleton*; and he spoke as to the other facts in the bill, and to the customs therein also mentioned.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel, and no evidence being read;

THE COURT ordered, by consent of both parties, that the bill be dismissed without costs, the plaintiffs undertaking to bring no other suit for the tithes of the wood in question.

Woodcock  
against  
Stanhope.

## MASTERS against STANDLEY.

*Cambridgeshire, 23d February 1763.*

HILARY TERM  
3. GEO. 3.

THE bill stated, that the plaintiff *Masters* was, on the second of *August* 1759, collated and inducted, by the *Bishop of Ely*, into the vicarage of the parish church of *Waterbeach*, in the county of *Cambridge*; that, at the time of the restoration of *Charles the Second*, the said vicarage being found to be of small value, *Matthew*, then *Bishop of Ely* and impropiator of *Waterbeach*, on receipt of the king's letters to the bishops for the augmentation of vicarages out of the rectories, &c. augmented the said vicarage with a portion of the rectorial tithes arising from the lands within the said parish anciently belonging to the dissolved house of nuns, called *Denny Abbey*, and with all the tithes and profits of those lands within the said parish, called *the Adventurers Lands*; that in consequence of such augmentation he did, upon the renewing the leases of his rectory or the tithes thereof, make reservation beyond the ancient rent, to the intent that the same should become payable to the vicar in augmentation of the endowment of that said vicarage; that for that purpose he, by indenture dated the fourteenth of *December*, in the twelfth year of *Charles the Second*, made between him and *Wistard Wild*, demised to him all that the rectory aforesaid, the mansion-house, with all other houses, edifices, and buildings, orchards, gardens, and glebe lands, and all waters, fishings, &c. thereunto belonging, &c. to hold to him, his heirs and assigns, &c. under the yearly rent of thirteen pounds, six shillings, and eightpence, with a proviso therein contained, that he should every year permit and suffer the vicar of the said parish church for the time being to gather and take to himself, and to his own use, all the tithes (except as in the said indenture is excepted)

The vicar of *Waterbeach*, in *Cambridgeshire*, is entitled to one-third part of the tithes arising on the lands formerly belonging to *Denny Abbey*; to all the tithes and profits of *the Adventurers Lands*; and to the small tithes of the other parts of the said parish.



MASTERS  
against  
STANDLEY.

of the *Adventurers Lands*, and also of a third part of the tithes of the lands anciently belonging to *Denny Abbey*; that by a subsequent lease of the said rectory, made the eighteenth of February 1743, by *Robert*, then *Bishop of Ely*, to the defendant, for the lives of three persons, there were contained the like reservations of the tithes aforesaid, and also a like proviso on the part of the lessee to suffer the vicar to take the same to his own use; that by virtue of the said endowment, reservations, and provisos in the said lease contained, all the vicars of the said parish had, ever since the twelfth year of *Charles the Second*, been instituted to the whole tithes of the *Adventurers Lands*, and also to one entire third part of the tithes of *Denny Abbey*; that the plaintiff had, ever since the thirteenth of April 1759, been well entitled, under the said grant, to have and receive the whole of the tithes of all titheable matters whatsoever arising upon the aforesaid lands; that about the twentieth of June 1759, the plaintiff *Masters* let to the plaintiff *Bridgman* all the offerings and tithes to the said parish belonging, except the tithes of part of the *Adventurers Lands*, for three years; that by the said lease of the eighteenth of February 1743, the defendant *Standley* was entitled to two third parts of the tithes of *Denny Abbey*; and that he ought to have suffered the plaintiffs to have taken the other third part thereof; but that he left the same to the defendant *Peck*, who had, ever since the plaintiff's induction, occupied and taken possession of the same, notwithstanding the provisos in the said leases, and had carried off the whole thereof; that the said third part thereof was of great value; and that the plaintiffs had often applied to them for the same, or the value thereof; but that they had refused to pay the same. The bill therefore prayed, that the defendants might be decreed to pay, satisfy, and answer the plaintiff *Masters* all and every such third part of the said tithes which he was entitled to, and which had been subtracted and taken away by them in the years 1759 and 1760, or the value thereof.

The defendants said, that the plaintiff *Masters* might have been collated and inducted into the said vicarage, as stated in the bill; but that they had never heard, nor did they believe, that at the restoration of *Charles the Second*, *Mathew*, then *Bishop of Ely*, augmented the vicarage with a portion of the rectorial tithes arising from the lands anciently belonging to the dissolved house of nuns, called *Denny Abbey*, and with all the tithes and profits of those lands within the parish called the *Adventurers Lands*; or that in consequence thereof he did, on renewing the leases of his rectory and tithes, make reservations beyond the ancient rent, to the intent that the same might become payable to the vicar in augmentation of the endowment of the said vicarage; and they insisted, that he had no right so to do for any longer term than his own life.

The

MASTERS  
against  
STANDLEY,

The defendant *Standley* said, that it appeared by the records in the augmentation office, that the rectory and manor of *Waterbeach cum Denny* came, by unity of possession, into the hands of the late prioress or abbess and convent of the late monastery of *Denny*; and that, upon the dissolution of the said abbey, they came into the hands of THE CROWN; that it appeared by the ministers accounts thereof from the feast of *Saint Michael*, in the first year of *Edward the Sixth*, to the same feast day in the second year, that by indenture dated the twentieth of *May*, in the twenty-sixth year of *Henry the Eighth*, the farm of the rectory of *Waterbeach*, with all the corn, grain, and hay, the thatch and fodder, to the said rectory, with all the lands, meadows, &c. as well of the free as customary tenants, and all other their appurtenances to the said rectory belonging, were demised to *Nicholas Wilcock* for thirty years, paying twenty marks yearly; that it appeared by the said minister's accounts, that by indenture dated the tenth of *October*, in the thirty-fifth year of *Henry the Eighth*, the farm of the said manor of *Denny*, with all houses, &c. together with all gardens, &c. were late in the hands of the abbess as *demesne lands* (except as in the said indenture is excepted), were demised to *Thomas Clarke* and others, as by the said indenture would appear more fully; that it also appeared, that *James the First*, by his letters patent, dated the sixth of *March*, in the eleventh year of his reign, granted to *John Yaxley* and *Edward Anniger*, and their heirs, &c. for ever, all that site or capital mansion-house of *Waterbeach*, &c. thereunto belonging, which said premises were parcel of the manor of *Waterbeach* and *Denny*, at twelve pounds *per annum*, &c. as in the said letters patent is fully mentioned; that *Charles the First*, by his letters patent, dated the fourteenth of *June*, in the fourth year of his reign, did give and grant to *Edward Ditchfield* and others, all that manor, and all those manors of *Waterbeach* and *Denny*, with their rights, &c. (except as is therein excepted), and which were parcel of the monastery of *Denny*, to hold to them, their heirs, &c. in fee farm, paying to the king one hundred and thirty-four pounds, three shillings, and fivepence yearly; that the said manors, lands, hereditaments, and premises, so granted out by THE CROWN by the said two letters patent, by several mesne conveyances became thereafter united and legally vested in the said defendant's brothers and the defendant, as tenants in common, to them and their heirs in fee simple; that his brother *George* died the fourth of *April* 1737, and by his will gave and bequeathed his third part, and all his estate and interest of and in the premises aforesaid to the defendant and his heirs; that by indentures of lease and release between his brother *John*, himself, and *J. Cole*, of the one part, and *J. Brigg* and another of the other, they did grant, bargain, sell, release, and confirm to them all the said premises before-mentioned, to hold the same for the defendant for ever. He

MASTERS  
against  
STANDLEY.

admitted the indenture of lease from *Robert*, late *Bishop of Ely*, dated the eighteenth of *February* 1743, as stated in the bill, and that he had renewed his said term in the said rectory with the present bishop, with the like exceptions and covenants as in the former demise; but insisted, that the vicars of the parish had never, since the twelfth year of *Charles the Second*, been entitled to one third part of the tithes growing in and upon the lands formerly belonging to the dissolved house of *nuns*, but that he was entitled to the whole of the tithes of the said lands, not as lessee of the *Bishop of Ely*, but under the grant of those lands and tithes from THE CROWN to his predecessors in fee, subject only to the payment of twenty-two shillings to the vicar of *Waterbeach* and his successors, in the name of a pension yearly issuing out of *Denny*, for all manner of tithes and oblations whatsoever, as appeared by the said ministers accounts; and which said sum had been constantly paid to the said vicar, and received by him, as a compensation for all manner of tithes and oblations; and that the plaintiff *Masters* had received the same as such compensation to *Lady Day* 1762; and he further insisted, that by such acceptance the said plaintiff was precluded from any further demand upon the defendants for the tithes aforesaid.

The defendants also said, that they did not believe that the plaintiffs were entitled to the whole tithes of the *Adventurers Lands*, the same having been purchased by the defendant *Standley* distinct from the manor or manors of *Waterbeach* and *Denny*. They denied that the plaintiffs had applied to them for an account of the said tithes, or that they had refused to discover the lands belonging to *Denny Abbey*; but admitted, that they had refused to pay the third part of the tithes thereof until they should be recovered in due course of law; and they insisted, that they were not obliged to discover all the titheable matters enquired after by the bill.

The plaintiffs replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel; and reading an indenture of lease, signed *Matthew*, *Bishop of Ely*, to *William Wild*, dated the fourteenth of *December* 1660; upon producing a manuscript book, called the *Barnwell Ledger*, deposited in THE MUSEUM, brought from the *Harleian Library*, and lodged there, and reading, though objected to, part thereof, viz. the prologue and title of the first part of the said book, and likewise the fourth part of the said book, folio 82; and also on reading a licence, dated the thirteenth of *May*, in the twentieth year of *Edward the Third*, to *Richard Talbot* and his wife, to enable them to grant the abbey of *Waterbeach* to the abbess and prioresses of *Denny*; a licence to the *Countess of Pembroke* to grant the advowson of the said abbey of *Waterbeach* to the said abbess and prioresses of *Denny* of the same date;

a lease



MASTERS  
against  
STANDLEY.

a lease of the parsonage of *Waterbeach* from the prior and convent of *Saint Giles, &c.* to *Nicholas Willcocks*, dated the twentieth of *May*, in the twenty-sixth year of *Henry the Eighth*; the ministers accounts of the said rectory, taken in the thirty-first year of *Henry the Eighth*; a grant to *Edward Elrington*, dated the twenty-eighth of *October*, in the thirty-first year of *Henry the Eighth*; the ministers accounts of the manor of *Waterbeach* with *Denny* from *Michaelmas*, in the thirty-sixth year of *Henry the Eighth*, to *Michaelmas*, in the thirty-seventh year of the said king; a copy of the particular of a lease of parcel of the demesnes of *Denny* to *Christopher Banks*, dated the seventeenth of *January* 1580; the counterpart of a lease from the *Bishop of Ely* to *Robert Nelson*, dated the eleventh of *October* 1639, of the parsonage of *Waterbeach*; several passages out of the defendant's answer; and hearing the defendant's counsel; and reading, on behalf of the defendants, a copy of a grant from *James the First*, dated the sixth of *March*, in the eleventh year of his reign, to *John Yaxley* and *Edward Aungier*, of the capital messuage of *Waterbeach* aforesaid; an indenture, dated the eleventh of *May*, in the sixth year of *Charles the First*, signed *Ed. Ditchfield* and others; the several proofs taken in the cause on both sides; and on full debate of the matter;

THE COURT declared, that the plaintiffs were entitled to a third part of the tithes and profits of all the lands in the pleadings in this cause mentioned, consisting of the demesnes, pasture, and arable lands belonging to the manors of *Denny* and *Waterbeach*, now in the occupation of *John Hemmington* and *Ed. Mason*, their under-tenants or assigns, or any other persons, and which were anciently belonging to the dissolved house of nuns, called *Denny Abbey*, within the parish of *Waterbeach*, in the county of *Cambridge*, under the said endowment of the fourteenth of *December* 1660; and thereupon ordered, adjudged, and decreed, that the defendants do severally account with, satisfy, and pay to the plaintiffs the value of the third part of the several titheable matters and things demanded by the bill, which they, or either of them, collected or received, or were entitled to collect or receive, from the lands above-mentioned, whether the same were in their or either of their occupation, or in the occupation of any other person or persons, and which were anciently belonging to the dissolved house of nuns, called *Denny Abbey*, from the beginning of the year 1759; the said defendants to pay to the plaintiffs their costs of this suit, to be taxed.

T. PARKER.  
S. S. SMYTHE.  
RICH. ADAMS.

MICHELL

EASTER TERM  
3. GEO. 3.

MICHELL *against* LAMPARD.

*Gloucestershire, 9th May 1763.*

The vicar of *Marshfield*, in *Gloucestershire*, is entitled to the tithes, except of cows and calves, arising on *Marshfield Farm* in kind, and to a *modus* of 4d. a year for every milch cow, and 4d. a year for every calf, in lieu of the tithe of such cow and calf.

THE plaintiff, as vicar of the parish church of *Marshfield*, in the county of *Gloucester*, stated, that the plaintiff, in the year 1756, was lawfully instituted into the said vicarage, and thereby became lawfully entitled to all vicarial tithes arising therein, and particularly to the tithe of milk, wool, lambs, colts, calves, pigs, pigeons, and underwood, arising on *Marshfield Farm*, and the lands thereto belonging, in kind.

The defendants admitted, that the plaintiff was vicar of the parish; and said, that there were several parcels of land within the said vicarage and parish, and particularly the parcels mentioned in their answers, which had been immemorially discharged from the payment of any tithes whatsoever, or any recompence or satisfaction for the same; that fourpence yearly, and no more, had been immemorially payable to the vicar, at *Easter*, for every milch cow in the said parish, for and in lieu of the tithe of all milk (except on the lands so discharged from the payment of tithes); and fourpence for every calf calved in the said parish, in lieu of all calves calved therein, except as aforesaid. The defendants further stated, that *Sir William Codrington* being seised of or entitled to the manor of *Marshfield*, and of divers messuages, lands, and tenements in the said parish, particularly of a large farm, consisting of a dwelling-house and nine hundred acres of land, divided into several closes, pieces, and parcels of arable, meadow, and pasture, and having common on the down and down thorns, and divers feeding pasturages and appurtenances thereto belonging, all lying and being in the said parish or the titheable places thereof, on the tenth of *September* 1756 demised the same to the defendants for a term of years; that they entered thereon, viz. on *Upper Withy Mead, &c.*; that they had on the said lands large quantities of titheable matters and things liable to pay vicarial tithes; but that they had not delivered to the plaintiffs any tithes in kind of such matters, or made him any satisfaction for the same, except as mentioned in their said answer; for that the manor of *Marshfield*, and a great quantity of lands lying within it, and particularly the following lands part of *Marshfield Farm*, namely, the westward and southward parts or sides of the said meadow or pasture ground, called *the Withy Mead, &c.* were part of the possessions of the abbot and convent of *Keynesham*, in *Somersetshire*, at the time of the dissolution thereof; that they were then, and had been immemorially, the fee and inheritance of the said abbot and convent; that the said lands contained sixty-four acres, two roods, thirty-three perches; that they were at the time of the said dissolution, and immemorially had been, absolutely acquitted and discharged of and from the payment in

MICHELL  
against  
LAMPARD.

in kind of all or any tithes whatsoever, or any *modus*, recompence, or satisfaction in lieu thereof; that the said abbey was one of the greater abbeys; that it was dissolved by the statute of 31. *Hen. 8.*; and that no tithes, or any satisfaction in lieu of tithes, had been paid or given for or in respect of any of the said lands; and they insisted, that the plaintiff was not entitled to any tithe in kind whatsoever, or any satisfaction for any tithe, from or in respect of any of those lands. They said, that they believed that the former occupier of the said farm had paid a composition of ten pounds a-year, including the said *moduses* to the vicar; that the same was paid and accepted until the fifth of *May* 1758; but that the plaintiff had not thought fit to accept the same from that time; that he then gave them notice to deliver their tithes of lambs and wool in kind; but that the plaintiff had objected to deducting sixty lambs and sixty fleeces of wool, according to the custom of the parish, and therefore no tithe in kind had been paid for the same. They set forth the other titheable matters and things which they had on the said farm, and the values, quantities, and qualities thereof; and insisted, that they were only liable to pay the aforesaid composition and the *moduses* to the fifth of *April* 1758 for their titheable lands, and not liable to pay any tithe for those lands which they contended were tithe free.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel on the twenty-second day of *November* last; and reading a decree of the court of augmentation, between *John Compton*, clerk, vicar of *Marshfield*, and *John Blanchard*, dated the eighteenth of *May*, in the thirty-seventh year of *Henry the Eighth*; a copy of a grant in fee from *Queen Elizabeth* to the *Earl of Sussex*, of the manor of *Marshfield*, dated the twenty-first of *May*, in the fourteenth year of her reign; a release, dated the twenty-fifth of *March* 1730, signed by *H. Harrington* and others; and the proofs taken in the cause; the cause was ordered to stand over to be further heard this day; when, upon hearing counsel fully,

THE COURT ordered a trial at law upon the following issue, viz. "Whether the several lands mentioned in the answer, called the *Westward Part* and *Southward Part* of the *Withy Mead*, containing ten acres, two roods, and thirty perches; two parcels of arable and pasture land, called *Wood Leases*, containing thirty-six acres, three roods, thirty-one perches; the eastward side of a parcel of pasture ground, called the *Nursery*, containing six acres; a parcel of meadow or pasture, called *Upper Broad Mead*, containing six acres, three roods, and seven perches; the middle or flat part of *Broad Mead*, containing four acres, one rood, and five perches, were part of the possessions of the abbot and convent of *Keynsbam*, in the county of *Somerset*, at the time of the dissolution



MICHELL  
against  
LAMPARD.

" lution of the said abbey ; and whether the same were held by  
" the said abbot and convent discharged of tithes : " the defend-  
ants in equity to be plaintiffs at law, and to be tried by a special  
jury ; and that if, upon the trial, the jury shall find that any of  
the said lands in question were not parcel of the possessions of  
the said abbey, and that other parts of the said lands were parcel  
of such possessions, then liberty was given to indorse the  
*posse* accordingly in such manner as the judge should direct,  
Costs and further directions to be reserved till after the trial.

The defendants neglected to proceed to the trial of the issue ;  
and on the twenty-eighth of November 1763, it was ordered to be  
taken *pro confesso* against the defendants, unless they proceeded to  
the trial thereof.

This cause came on to be heard on the fifth of December  
1764, when the plaintiff's counsel informing the court that the  
defendants had not proceeded to a trial of the issue, but had  
submitted to account with the plaintiff for all the tithes of wool,  
lambs, colts, pigs, pigeons, and all other small tithes, except  
milk and calves, which had arisen from the lands in their  
possession in the said parish of *Marshfield* from the fifth of April  
1758 (being the time to which ten pounds a-year for all tithes  
whatsoever was paid and compounded for), to the time of the  
plaintiff's filing his bill in this cause ; and that the plaintiff had  
agreed that the two *modus*es of fourpence a year for every milch  
cow, and fourpence a-year for every calf, as insisted upon by the  
defendants in their answer, should be established, in lieu of tithes  
in kind for milk and calves ; that the defendants had also agreed  
to account with and pay such *modus*es to the plaintiff from the  
said fifth day of April 1758 to the time of the plaintiff's filing  
his bill ; and that each party were to stand by their own costs  
of suit to this time ; and that all subsequent costs should  
be reserved.

THE COURT, upon hearing the defendant's counsel consent to  
the said agreement, ordered the two *modus*es of fourpence a-year  
for every milch cow, and fourpence a year for every calf, in lieu  
of tithes in kind for milk and calves, to be established ; and  
referred it to the deputy to take an account of what was due from  
the defendants to the said plaintiff for the said *modus*es respectively  
from the fifth of April 1758 ; and also for all the tithes of wool,  
lambs, colts, pigs, pigeons, and all other the small tithes demanded  
by the bill, except milk and calves, which had arisen from the  
lands in their possession respectively in the parish of *Marshfield*  
from the said fifth day of April 1758 ; and that the defendants  
do satisfy and pay the said plaintiff what shall be reported due  
upon the taking of such accounts : both parties to abide by their  
own costs of suit to this time. The consideration of subsequent  
costs to be reserved till after the report.

TORRIANO

TORRIANO *against* LEGGE.*Essex, 6th June 1763.*TRAIN. TERM,  
3. GEO. 3.

**T**HE plaintiff, as rector of the parish and parish church of *Chingford*, in the county of *Essex*; stated, that in the year 1757 he was lawfully presented to and inducted into the said parish; that by virtue thereof he became entitled to all the tithes, as well great as small, in kind, and to all duties whatsoever arising therein, and belonging to the said rectory; that the defendant had, for several years, occupied therein several parcels of arable, meadow, and clover ground, which they had sown with wheat, oats, barley, beans and other grain; that they had also mowed the grass growing on the said grounds, and made it into hay; that they had mowed the said clover ground twice in the year, and had inned the crops thereof; that they had also fed and depastured milch cows, bulls, and sheep, as well of their own as of other persons; that they had bred geese and fows; that they also occupied orchards, gardens, yards, and other places, with fruit trees growing thereon; and from which they had gathered apples, pears, and other fruits; but that they had, for the last two years, refused to pay the plaintiff any tithes for the same. The bill therefore prayed, that they might account for the said tithes and dues so withheld and subtracted from him as aforesaid, and that his right to the tithes in kind, both great and small, arising in the parish, might be established, and the defendants compelled to set out the same in kind for the future.

The rector of *Chingford*, in *Essex*, is entitled to the great and small tithes of the parish in kind.

S. C. 1. Black.  
Rep. 420.  
S. C. Rayn. 519.

The defendants admitted, that the plaintiff was rector of the parish; and that they had, for several years past, occupied arable, meadow, pasture, and grass grounds, in the parish; but denied that they ought to pay him tithes in kind for the same, for that the following *modus*es had been immemorially paid for the said land, and for all other lands in the parish: **FIRST**, Five shillings an acre every year for all lands sowed with wheat. **SECONDLY**, Two shillings and sixpence an acre for all lands sowed with oats or any other grain excepting wheat. **THIRDLY**, One shilling and fourpence an acre for all grass lands mowed, called *Uplands* or *Forest Lands*. **FOURTHLY**, Two shillings an acre for all grass lands mowed, called *Meadow or Pasture Lands*, in lieu of all tithes of hay, grass, and pasture. **FIFTHLY**, Fourpence a-year for every orchard, in lieu of all tithes of fruit within the parish. **SIXTHLY**, Sixpence yearly for every cow kept and depastured upon the *Uplands* or *Forest Ground*, and ninepence upon the meadow or pasture lands, in lieu of all tithes of cows, calves, and milk. **SEVENTHLY**, Two shillings and sixpence for every farrow of pigs, in lieu of tithe of pigs; and that the said *modus*es for corn, grain, grass lands, orchards, and cows, were

TORRIANO  
against  
LEGG.

were due and payable on *Michaelmas Day* yearly; that they had constantly, until the year 1757, paid the said *modus*es in the same manner as the other landholders within the said parish had paid the same to the former rectors of the parish; and that they had always been received by former rectors in lieu of their respective tithes; that the plaintiff having insisted on having tithes in kind for the year 1759, the landholders, to avoid suits, and for peace's sake, submitted to pay them tithes in kind for that year, hoping that he would have accepted of the said *modus*es for the future, but which he had refused to do; that the landholders, in the month of *May* 1761, accordingly signed and sent notices to him that they would not set out, or suffer him or his agents to take any tithes in kind of them for that year, or for the future, but that they would punctually pay his tithes as they should become due, according to the ancient manner of paying in that parish. They admitted, that they had, for several years past, occupied divers parcels of arable, meadow, pasture, upland, and forest grounds in the parish; and set forth the quantity of their lands, the qualities, and values of the titheable matters and things they had yearly thereon; but insisted upon the payment of their tithes according to the said ancient *modus*es, and tendered the same.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel; and reading the defendants answers; and upon full debate of the matter;

THE COURT ordered the defendants to account for the value of the tithes of the several titheable matters and things demanded by the bill, with costs (a).

(a) *Torriano*, the rector of *Chingford*, filed another bill against *Feag* and other inhabitants of the parish, claiming tithes as in the above suit; and the defendants insisted on the same *modus*es in lieu thereof; but on the 6th of June 1763, the Court ordered them to pay their tithes in kind. It is said, that the *modus*es of five shillings an acre for wheat; of two shillings and sixpence an acre for other grain; of two shillings an acre for meadows mowed; of one shilling and fourpence for upland grass grounds; and of two shillings and sixpence for every farrow of pigs, were over-ruled, as being too rank, by approaching too near the real value of the tithes: that the *modus* of fourpence for every orchard, in lieu of the tithes of all fruit trees in the parish, was over-ruled, because it was a *modus* of one tithe in lieu of another; but that if it had been,

"in lieu of all orchards," or "in lieu of the fruit growing in all orchards," it might have been good; and that the *modus* of ninepence a cow depastured on the meadows, and sixpence a cow depastured on the uplands, in lieu of the tithes of all cows, calves, and milk, was also over-ruled; because as, under this prescription, agistment tithes not being included, it is rather rank; but principally because, whether agistment cattle are included or not, the recompence is too loose and uncertain; for that a parson, in lieu of a certain right at common law, must have a right equally certain by the prescription; and in the present case, if a cow were depastured partly on the uplands and partly on the meadows, he would not know which *modus* to demand, or how to distinguish them. See *Torriano v. Legge*, 1. Black. Rep. 420.



PRICE *against* ELVEY; *et à Contra.*TRIN. TERM,  
3. GEO. 3.*Kent, 29th June 1763.*

THE bill stated, that the plaintiff had been, for several years past, rector and vicar of the parish of *Lyming* and the hamlets of *Sandford* and *Puddlesworth*, in the county of *Kent*, and was entitled to all the tithes and *Easter* offerings annually arising therein; that the defendants, for three years past, had occupied divers lands therein, and had sowed the same with grain, had planted hops, set potatoes, grewed hay, cut wood, and cultivated other things, which they had mowed, gathered, cut down, felled, and carried away, without allotting the tithes thereof, or making the plaintiff any satisfaction for the same, save for the great tithes of corn and grain till *Michaelmas* 1760; that they had also depastured on their said lands horses, colts, cows, heifers, yearlings, sheep, lambs, sows, pigs, and other titheable cattle; that they had several colts from their mares, much milk from their cows, several calves, quantities of wool and lambs from their sheep, several pigs from their sows, honey and wax from their bees, eggs and chickens from their poultry, apples, pears, peaches, nectarines, quinces, plumbs, cherries, and other fruit, from their gardens and orchards, and other titheable matters and things, the tithes whereof ought to have been set out and paid to the plaintiff, as vicar, as well as *Easter* offerings; but that, although he had often requested of them to come to a fair account with him for such tithes and dues, and to pay him the same from *Michaelmas* 1760, they had refused so to do. The bill further stated, that he did not demand any account or discovery of the great tithes to *Old Michaelmas* 1760; and prayed, that the defendants might account for the small tithes during the time aforesaid, and pay him the just value thereof.

The rector and vicar of *Lyming*, and the hamlets of *Sandford* and *Puddlesworth*, in *Kent*, claims the small tithes from *Michaelmas* 1760 for three years.

The defendants admitted, that the plaintiff was rector and vicar of the said parish and hamlets; that they had, during the time mentioned, been inhabitants of the hamlet of *Sandford*, and had occupied lands therein; and stated, that for three years, ending the tenth of *October* 1759, they had severally paid several sums of money by way of composition in full satisfaction of all the great tithes due from them to the lessee of the great tithes; and that the defendant *Kennett* had paid his offerings, and ten shillings for his tithe of hops of one acre; that the plaintiff had received the same for the year ending *Old Michaelmas* 1760; and that the plaintiff did not then demand anything from them for any great tithes due before, but had given them receipts, dated the twenty-eighth of *October* 1760, for their tithes of corn,

The defendants say, that they had paid their great tithes to the 10th of *October* 1759;

PRICE  
against  
ELVEY;  
and Contra.

that they were  
under a compo-  
sition with the  
former vicar;  
that the present  
vicar had contin-  
ued the same,  
and had not giv-  
en them any no-  
tice that he in-  
tended to deter-  
mine the same.

They set forth the particulars of the lands they occupied; and further stated, that they had been under a *composition* with the former vicar for the tithes thereof; that the plaintiff had continued to take the said composition, and had never given them notice to determine the same, except that he indorsed on his receipts, "*Take notice, you are under no agreement with me for your vicarial tithes*;" that this indorsement was not made until after the expiration of the year, and therefore was not sufficient to destroy the composition for the then running year; that neither the like nor any other was ever afterwards given; and that they therefore considered and insisted, that the aforesaid agreement was still subsisting and in full force; but that if the court should be of a contrary opinion, and think the plaintiff entitled to an account of their small tithes, as prayed by the bill, he ought to pay the costs of the suit, he having never demanded any account of such small tithes before the bringing of his bill, or even intimated his intention of taking such tithes in kind; but that, on the contrary, by encouraging them to expect that he would make future agreements for compounding such small tithes, he had occasioned them to take the said tithes themselves, and thereby prevented them from paying the small tithes in kind, which, on receiving due notice to that effect, they would readily have done. They further stated, that the plaintiff, since his bill had been filed, had given them notice to pay their small tithes in kind from *Michaelmas Day* then last past; and that they had since set them out accordingly; but that the plaintiff had refused to accept the same, or to carry them away; and they set out the several lands, &c. by them occupied, and the quantities of the several titheable matters by them had thereon from *Old Michaelmas Day 1757 to Old Michaelmas Day 1761*, and what they paid or offered to pay the plaintiff on account thereof,

The defendants  
file a cross bill.

The defendants filed a *cross bill*, stating, that the plaintiff, about *Michaelmas 1756*, was instituted into the said rectory; that they occupied lands therein in the hamlet of *Sandford*; that the plaintiff had granted a lease of the tithes to *Richard Marlb*, and had empowered him to compound for the great tithes, and to receive the same of the occupiers of lands there; that they had compounded with *Richard Marlb* for all their great tithes for three years, ending 1759, at the following rates, *viz.* that *Elvey* should pay four shillings an acre for wheat, and three shillings an acre for lent corn; that *Kennett* should pay seven pounds a-year for one of his barns, and two pounds a-year for the other; that the said compositions had been paid to the preceding rector; that they had also paid the same to the said *Richard Marlb*; that the rector took the management and receipt of the great tithes for the year 1760 into his own hands; and that he had received the same compositions from them for the

the year ending at *Old Michaelmas* 1760, without pretending that any thing was due to him for the three years preceding; and that he had given the plaintiffs several receipts as follow: "Received, *October* the twenty-eighth 1760 of *Christopher Elvey*, "three pounds, thirteen shillings, and threepence, for eight "acres of wheat, thirteen acres, three quarters of lent corn, "one at four shillings and the other at three shillings, by me, "R. Price."—"Received, *October* 1760, of *Stephen Kennett*, "seven pounds for corn tithe of his own farm, and two pounds "for the corn tithe of *Girmige Brook*." He therefore prayed, that the said payments made by them as a composition for the great tithes of the said four years, ending at *Michaelmas* 1760, might be established, in full satisfaction for such great tithes; and that they might be quieted from all further demands on account of such great tithes in the said years.

PRICE  
against  
ELVEY;  
et c. Contra.

The rector admitted, that *Richard Marfb* had collected his tithes for the said years, and had accepted and received such compositions in full satisfaction of the great tithes for the said three years; and that he had received of them the like compositions for the year ending at *Old Michaelmas* 1760 in full for their great tithes, and had given them such receipts; and he said, that he had never demanded, or intended to demand, payment for the said great tithes a second time, nor did he mean to take any advantage of the manner in which his receipts were worded; but that the charges in his bill for an account of great tithes were inserted therein by mistake; that he had caused his bill to be amended in that respect, and had thereby waived his demand for corn tithes for the years ending at *Michaelmas* 1760; and he denied that he had ever pretended that they had not paid the same. He admitted, that *Richard Marfb* had power to make and receive such compositions for the great tithes for the said three years; that from what they had paid to him ending *Michaelmas* 1760, he discharged them from the same, and from all demands on that account, except the tithe of the hay, wood, and small tithes that had become due to him during the said years.

The rector answers the cross bill.

A replication was filed in the original cause, but not in the cross cause; and witnesses were examined on both sides in the original cause; and upon hearing counsel in both causes; and reading a receipt, dated the twentieth of *October* 1757, and a notice indorsed thereon, signed R. Price; the proofs taken in the original cause; and on full debate;

The cause heard.

THE COURT ordered the original bill to be dismissed with costs as to *Kennett*, touching the demand of hops for the year 1759; and the defendants in the original cause to account for the tithes of all the other titheable matters demanded by the said original bill, and also for *Easter* offerings, the plaintiff to have his taxed

The small tithes decreed.



PRICE  
against  
EVERY;  
et a Contra.

costs of this suit, except as to the demand of hops above-mentioned: subsequent costs and further directions to be reserved till after the report.

THE COURT also ordered, that the plaintiffs in the cross bill should have their costs of the said suit in the cross cause, to be taxed.

TRIN. TERM,  
3. GEO. 3.

HALSTED against MERRY.

*Buckinghamshire, 1st July 1763.*

The vicar of  
*Padbury*, in *Buck-*  
*inghamshire*, is en-  
titled to his small  
tithes in kind.

THE plaintiff, as vicar of *Padbury*, in the county of *Bucks*, claimed all the small tithes and *Easter* offerings yearly arising therein, and particularly for the feeding and depasturing dry and barren cattle, milch cows, milk, calves, mares, foals, sheep, lambs, wool, sows, pigs, bees, honey, wax, turkies, geese, hens, ducks, goslings, chickens, eggs, apples, pears, garden stuff, and furze cut from the commonable and pasture lands, for five years, ending in 1755.

The defendants admitted, that the plaintiff was vicar of *Padbury*, and had been so for twenty-eight years last past; but they denied that he, as such, was entitled to the small tithes, and to *Easter* offerings therein, or to any satisfaction for the same; and insisted, that, for time immemorial, they and those whose estate they had in the lands in the said parish, and all other occupiers of lands, cottages, and commons therein, except the said defendants for a short time and the occupiers of the impropriate glebe lands, had constantly paid to the vicar nine shillings a-year for every yard land, except the glebe land; five shillings for every whole cottage; and two shillings and sixpence for every half cottage, including the yards, orchards, gardens, and appurtenances, as *modus* in lieu of all small tithes in the parish; that the said *modus* had been immemorially paid at two half-yearly payments, at *Hocktide* and at *Martinmas*. They also insisted, that fourpence halfpenny a-year had been immemorially paid by the head of every family in the parish, in lieu of *Easter offerings* for himself and his family. They further stated, that they occupied several yard lands in the parish, and that in right thereof they were entitled to *common of pasture*; and insisted on the aforesaid *modus*.

The plaintiff replied; the defendants rejoined; and several witnesses were examined on both sides; and upon hearing counsel; and reading an endowment of the parish of *Padbury*, signed by the vicar and the churchwardens of the parish, dated the eighth of *June* 1274; two terriers of the parish, the one dated the seventh of *May* 1707, and signed *W. White*, vicar, and *G. Medley* and another, churchwardens, the other, dated the

the twenty-eighth of *October* 1724, and signed by *J. Chesslyn*, vicar, and *W. Boughton* and another, churchwardens; a receipt, signed *W. Halsted*, dated the twenty-sixth of *May* 1730; and the proofs in the cause;

HALSTED  
against  
MERRY.

THE COURT ordered the defendants to account for the small tithes demanded by the bill, with costs; and for *Easter* offerings at twopence for each communicant above sixteen years of age in their several and respective families; the account as to *Easter* offerings to be taken without prejudice and without costs; and subsequent costs and further directions to be reserved till after the report.

STANLEY against SHARPE.

*Cumberland, 2d July 1763.*

TAIN. TERM,  
3. GEO. 3.

THE bill stated, that the plaintiff's father was in his life-time, and at his death, seised in fee of all the tithes of hay, wool, lambs, kine, calves, hens, geese, swine, and all other tithes whatsoever, great and small, predial and personal, yearly arising within the several towns, hamlets, and precincts of *Esbdate*, *Myterdale*, *Wafdale*, and *Wafdale Head*, in the parish of *Saint Bees*, in the county of *Cumberland*; and of all oblations, offerings, pensions, portions of money, and rents, yearly payable for any tithes whatsoever within the said towns, hamlets, and precincts; that the said tithes and premises were heretofore reputed to be parcel of the rectory or cell of *Saint Bees*, in *Coupland*, in the said county, or thereunto belonging, and some time parcel of the possessions of the dissolved monastery of *Saint Mary*, near the walls of the city of *York*; that the same was vested in THE CROWN by the dissolution of monasteries; that the plaintiff's father died on the twenty-third of *July* 1751, leaving the plaintiff his only son and heir; that on his death, he became seised in fee of all the said tithes, and particularly of the tithes in kind of the wool of *elder sheep*, and of the first clipping of young sheep, commonly called *hog wool*; that his ancestors, and those under whom he claimed, had, from time to time, been entitled to and received, until his said father's death, from all and every the occupiers of lands within the several towns and hamlets aforesaid, a certain *modus* of two shillings in lieu of every tenth lamb which yearly fell therein and continued alive until the twenty-ninth of *June* in each year; that if there were less than ten such lambs, then for one, two, three, or four of such lambs, he received one halfpenny for each; that if there were only five, then he received one shilling for the tithe of such five lambs; that if there were six, then he received one shilling and tenpence; if eight, then one shilling and elevenpence; and if nine, then one shilling and elevenpence

The impropriator of the tithes of the township of *Esbdate*, *Myterdale*, *Wafdale*, and *Wafdale Head*, in the parish of *St Bees*, in *Cumberland*, is entitled to the tithes of sheep and lambs, and of the wool thereof, in kind.

See *Laithes v. Christian*, vol. ii. page 556.

STANLEY  
against  
SHARPE.

halfpenny for the tithe thereof; that the said *modus* of two shillings as for the tithe of lambs under ten had been immemorially paid yearly to the plaintiff and his ancestors, and to those under whom he claimed, by the occupiers of lands within the towns of *Fisdale* and *Myterdale*, on the Sunday next after *Michaelmas Day* in each year, on the communion table in the chapel of *Fisdale* aforesaid, and by the occupiers of lands within the towns and hamlets of *Wafdale* and *Wafdale Head*, on the Saturday next before *Michaelmas* in each year; that the defendants, for two years past, had been in the occupation of several lands within the said towns and hamlets, and had yearly kept and depastured thereon great numbers of sheep, from which they had wool, lambs, and hog sheep; and that he was entitled to the tithes, not only of the wool of *elder sheep* and of the first clipping of the lambs and *hog sheep* in kind, but to the *modus* of two shillings in lieu of every tenth lamb, and to the other *moduses* for odd lambs also; but that the defendants had subtracted their said tithes of wool, and had refused to come to any account for the value of the tithes thereof, or to pay the said *moduses*, or to give any account of their lambs, so as to enable him to ascertain what was due from each of the said defendants; and that the defendant *Vicars* claimed the said tithes by virtue of some lease formerly granted to him thereof. The bill further stated, that by the custom of tithing generally used in the neighbourhood the tithe of lambs in kind was paid on *Saint Peter's Day* yearly; but that the said lands being situate in a mountainous part of the county, and the lambs dropping upon large and very extensive commons at a great distance from the defendants habitations, it would be very troublesome and expensive to the defendants, and occasion the deaths of many of their lambs, to bring them from the said commons to their houses in order to be tithed, which the plaintiff submitted they would be obliged to do in case they paid the tithe of lambs in kind. The bill therefore prayed, that the defendants might be decreed to account with the plaintiff for the tithe of all the wool they had subtracted, and for the *moduses* during the time aforesaid, and make him satisfaction for the same; and that his right to the said tithes and payments might be established.

The defendant *Sharpe* and others admitted, that the plaintiff was the only son and heir of his father, deceased; that his father was, at his death, seised in fee of the said tithes; that his father died at the time mentioned in the bill; that the plaintiff was, as heir at law, entitled to the freehold and inheritance of such tithes; that tithe in kind was due for the wool of the *elder sheep*; that by a custom for several years used in the said towns and hamlets, a certain yearly payment of two shillings had been, from time immemorial, paid by all the occupiers of lands within the said townships or hamlets to the persons entitled thereto on the twenty ninth day of *June*, old style, in each year, for every



STANLEY  
against  
SHARPE.

ten lambs living on the said twenty-ninth of *June*, in lieu of the tithe in kind of all the lambs fallen on such lands in the preceding year; that such other sums for the number under ten, as stated in the bill, had been paid in lieu of the tithe in kind of all wool arising for the first year from such lambs, commonly called *hogs*, fed on such lands, until the year 1757; but they insisted, that no tithe in kind, or any other satisfaction than as aforesaid, in lieu of the tithes of lambs or the wool of the first shearing, called *hog wool*, the first year they were depastured in any of the said townships, had been taken or paid within the memory of man, unless in some few instances very lately through ignorance. They admitted, that they had been for two years before the filing the bill, and still were, in the occupation of several lands and pasture grounds in the said townships; and that they kept thereon several flocks of sheep, from which they had wool and lambs and some hog wool; and they said, that they had paid to *Vicars*, who collected the tithe, all the tithe in kind arising from the *elder sheep*; the said composition of two shillings for every ten lambs; and, for the sake of peace, a small matter for the *hog wool* for the year 1757; that this was the first time of its having been demanded of them; and that the said *Vicars* took the same, and was contended therewith, and made no further demand for the said tithe; that he afterwards insisted, that the said yearly payment of two shillings for every tenth lamb was only in lieu of the tithe of lambs, and not in lieu also of the tithe of such *hog wool*; and that he was entitled to the tithe of the said *hog wool* over and above the said yearly payment of two shillings for every ten lambs; that they had refused to submit to the said demand, as unreasonable in itself, and contrary to the general method of tithing used in the said townships; and that on the said *Vicars* refusing to receive the same, they had not paid either the said composition or tithe wool for the year ending on the twenty-ninth of *June* 1758. They set forth an account of the number of fleeces of wool they had in each year, distinguishing the *elder sheeps wool* from the *hog wool*; and also how many lambs they had in each year; and said, that they had kept by them the full tenth part of all such *elder sheeps wool* as the tithe thereof; and that they were willing to deliver the said tithe of their *elder wool*, and to pay the arrears of the said yearly payment of two shillings a-year for every tenth lamb in each year, in lieu of the tithes of all lambs and hog wool: and they hoped that the Court would establish the payment of two shillings as a *modus* for the tithes of lambs only. They further said, that they were willing and ready to pay the tenth part of the said wool arising from their *elder sheep* in kind, and the said sum or composition of two shillings aforesaid; or in case the plaintiff would forego his claim of two shillings for the tithe of lambs only, and would receive tithes in kind for all sorts of wool and lambs, they would, to prevent all

STANLEY  
against  
SHARPE.

disputes for the future, pay all tithes of wool and lambs arising from their estates without fraud, and in kind, on condition that he would pay all the costs of this suit, and cease proceeding further therein.

The defendant *J. Vicars* said, that the plaintiff's father, in the year 1736, executed a lease to him and another of the tithes of wool and lambs, and of all tithes, oblations, obventions, and prescriptions in lieu of tithes, arising within the said districts, for twenty-one years; that for all the tithes which he had collected or received he had accounted, as rector or agent for the plaintiff, with the plaintiff's guardian; and he disclaimed all right to the tithes claimed by the bill.

The plaintiff replied to all the answers (except to the answer of the defendant *Vicars*); and the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel; and reading several depositions in the cause; and the deposition of the defendant *Vicars* examined on the behalf of the defendants; and on full debate;

THE COURT ordered the deputy remembrancer to take an account of what was due to the plaintiff from the defendants *Sharpe* and others for the value of the tithe of the wool of sheep and lambs fed and depastured by them respectively on their lands occupied within the several townships or hamlets in the bill mentioned during the time so demanded, and that they do pay to the said plaintiff the costs of suit, so far as related to the said tithes, to be taxed; and that the bill, so far as the same related to the demand of the *modus* or customary payment of two shillings as and for the tithe of every ten lambs fallen on the said lands of the defendants, and to the demand of the several sums of money in the bill mentioned, as and for the tithe of odd lambs under ten, to be dismissed with costs.

THE COURT further ordered and decreed, by consent as well of the defendants as of the plaintiff, that it be also referred to the deputy remembrancer to take an account of what was due to the plaintiff from the defendants for the value of the tithe of their lambs fallen on the lands occupied by them within the said townships and hamlets during the time demanded by the bill, but without costs on either side. Subsequent costs and further directions to be reserved till after the report.

PARKER, *Chief Baron.*

SMYTHE, *Baron.*

ADAMS, *Baron.*

PERROTT, *Baron.*

JONES

JONES *against* FLEET.

Hampshire, 4th July 1763.

TRIN. TERM,  
3 GEO. 3.

THE bill stated, that the plaintiff was, in the year 1723, duly presented to the rectory and parish church of *Mottisfont*, with the chapels of *Lockerley* and *East Dean*, in the county of *Hants*, thereto annexed, and had thereby become entitled to receive all the tithes great and small, and all oblations, obventions, offerings, and other ecclesiastical dues whatsoever arising in the said parish and chapelries, or the titheable places thereof; that the defendant, for twenty-two years last past, had held and enjoyed within the chapelry of *Lockerley* a farm called *Forder's Farm*, and another farm called *Beverstock's Farm*; that from *Michaelmas* 1741 to *Michaelmas* 1757 he rented the tithes of *Beverstock Farm* of the plaintiff at three pounds a-year, and from *Lady Day* 1738 to *Lady Day* 1758 the tithes of *Forder's Farm* at three pounds, ten shillings a-year; that before *Michaelmas* 1757 he gave him notice that he should hold the tithes of *Beverstock Farm* no longer than *Michaelmas* 1757, and before *Lady Day* 1758 he gave him the like notice as to *Forder's Farm*; that he let both the said tithes for the year 1758 to *F. Cains*; and that the defendant accounted with him, and satisfied him for the tithes thereof; that from *Michaelmas* 1758 he became entitled to receive from the defendant the tithes in kind arising on *Beverstock Farm*, and from *Lady Day* 1759 the tithes in kind arising on *Forder's Farm*; that the defendant accordingly set out the tithes of corn and hay which had arisen on the said farms; and he hoped that he would also have set out the tithes of the wool, lambs, and hops which had arisen therein; but that he had subtracted, and refused to pay or discover the same. The bill therefore prayed, that the defendant might be decreed to account with the plaintiff for all the tithes of wool, lambs, and hops, which had arisen in and upon the said farm from and after the respective times above-mentioned, and satisfy him for the same.

The rector of *Mottisfont*, with the chapels of *Lockerley* and *East Dean*, in *Hampshire*, annexed, claims the great and small tithes of *Forder's Farm* and *Beverstock's Farm*.

The defendant said, that it might be true that the plaintiff was, in *April* 1723, duly presented to the said rectory and chapelries, and thereby entitled to all the tithes great and small, and to all oblations, obventions, offerings, and other ecclesiastical dues payable to the rector thereof; and he admitted that he had, for twenty-two years past, occupied the aforesaid farms; but he said, that he had paid the plaintiff's tenant, *Cains*, for all tithes on *Forder's Farm* to *Old Lady Day* (the fifth of *April*) 1759; and that therefore no tithes of his lambs could be due to him. He also said, that his sheep had been fed on *Forder's Farm*; and having been sheared little more than a month after

The defendant says, that he had paid his tithes of lambs to *Old Lady Day* 1759;

that the sheep fed on *Forder's Farm* had been

sheared rather more than a month after *Lady Day* 1759;

F 4

Lady



JONES  
against  
FLEET.

that by the custom of the chapelry of *Lockerley* no tithe wool is to be paid, unless the sheep had been kept three months before shearing time;

that the plaintiff had never demanded the tithe of hops until after they had been manufactured and paid the duty;

that he had offered to pay him for the same in proportion to the quantity of ground on which they grew;

that no tithes are due for lambs fallen from sheep fed on the *Common*.

*Lady Day 1759*, the full tithe, if any, could not be due for so short a time after *Old Lady Day 1759*, to which time he had paid all the tithes. He further said, that no tithes in kind of wool had been paid in the parish of *Lockerley*, unless the sheep had been kept three months before the shearing. He also said, that having grubbed up an old chalk pit, and planted part of the same with hops at a very great expence, some hops grew thereon, and were gathered and manufactured about *Michaelmas 1759*, but what quantity there was he knew not; that no tithes in kind of hops had ever been paid in the parish of *Lockerley*; that at the time of gathering the said hops, no tithe thereof had been demanded of his servant, nor till some time after they had been manufactured and paid the duty; that then a demand was made of the tenth pound; that as soon as he was informed of the said demand, he enquired what was the usual method of paying the tithes of hops; and that being told at the best hop plantations that hops did not pay tithes in kind, but that from eight shillings to twenty shillings an acre were paid in lieu thereof, and that the most paid at *Farnham* did not exceed twenty shillings the acre, he told the plaintiff's tithe-gatherer, when he afterwards demanded tithes of his hops so manufactured, that if any tithe of hops were due in kind, he should have demanded it when the hops were gathered, and that he would not manufacture and pay duty for hops, and then pay the tithe thereof, but that he was ready to pay, in proportion to the quantity of hop ground, as much as was paid any where in the best plantations; and that to prevent any mistake, he ordered his servant to offer the plaintiff's tithe-gatherer two shillings and sixpence in lieu of the tithes of the said hops, the same being more than at the rate of twenty shillings an acre for his said hop-ground at the time the tender was made; but that on the same being offered to him, it was refused. He also said, that all his lambs between *Michaelmas 1758* and *Lady Day 1759* fell on *Forder's Farm*, and none upon the *Common*, or on *Bowerstock's Farm*; but that if any had fallen on the *Common*, the plaintiff could have no pretence to the tithe thereof, as the defendant had full right to turn out on the *Common* any number of sheep on account of *Forder's Farm*. He further said, that he had several lambs fallen on *Forder's Farm*, which were all of considerable age before *Old Lady Day 1759*, and fit to be tithed; and therefore tithes of his lambs could not be due to the plaintiff, because tithes for the same were included in the payment of rent for all tithes to the plaintiff's tenant to *Old Lady 1759*; and that the next year he had paid the tithes of his lambs to the plaintiff. He also said, that he had several sheep upon the *Commons* in right of *Forder's Farm*; but that having paid rent for all tithes on the said farm to *Lady Day 1759*, the plaintiff could not be entitled to the full tithe of the wool.

The

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel; and reading the proofs taken in the cause; and upon full debate;

JONES  
against  
FLAET.

THE COURT ordered the defendant to account with the plaintiff for the tithe of his lambs, wool, and hops, on *Forder's Farm* from *Lady Day* 1759 to *Lady Day* 1760, being the time demanded by the bill, and to pay the plaintiff his costs of suit to this time.

The defendant ordered to account for the tithes of his lambs, wool, and hops.

THE COURT FULL.

HUGILL against COATES.

MICH. TERM,  
4. GEO. 3.

Yorkshire, 10th November 1763.

THE rector of *Great Smeaton*, in *Yorkshire*, claimed all manner of tithes and other ecclesiastical dues which had arisen in the said parish in the year 1761, and particularly the tithes of ten acres of rape seed which the defendant had that year cut down, threshed, dressed, reaped, and carried away, without setting out the tenth part thereof, or making the plaintiff any satisfaction for the same; the tithes of depasturing divers barren and unprofitable cattle, some of which were his own property, and others taken in for hire, particularly divers brood and other mares, for the agistment of which he received for each mare weekly four shillings; and also the tithes of wool sheared during the said year: and the bill charged, that the custom of tithing rape seed was always to set it out upon the ground where the same was grown, threshed, and dressed; and that it was contrary to the course of husbandry to remove the same from the place where it was reaped until it was threshed and dressed, by reason of the great loss that would attend the same.

The rector of *Great Smeaton*, in *Yorkshire*, claims the tithes of rape seed and wool in kind; the tenth part of the price for which brood mares were taken in to agist; and a proportionate part of the value of the herbage on which the defendant's barren and unprofitable cattle were fed; and says, that the custom was always where it grew.

ways to tithe the rape seed on the ground

The defendant admitted, that the plaintiff was rector of the parish; and said, that in the year 1761 he had occupied therein certain lands, called *the Mill Pasture*, *the Calf Close*, *the New Laid*, and *the Two Acres* of ground formerly part of and taken from *the Cow Pasture*; that the yearly value thereof was sixteen shillings an acre, taking one acre with another; that part of the pasture land was, in the year 1761, depastured by horses necessarily used in managing his farm; that the other part thereof was used for the purpose of fattening or feeding a stock of cattle on his own account, the tithe of which he had tendered to the plaintiff; that the other part of the pasture land was, in the year 1761, agisted by milch cows and calves which he had upon his said farm as breeding stock, the produce of which cows was used and consumed in the necessary maintenance of his family, except

The defendant says, that his lands are not worth more than 16s. an acre;

sumed in his family, except some butter, which he sold;  
a small

that the produce of his milch cows was con-

HUGILL  
against  
COATE.

that there is a  
modus of 2½d. a  
cow in lieu of  
the tithes there-  
of;

that he had only  
depastured seven  
horses and four  
calves of his  
own;  
and had agisted  
several brood  
mares at 4s. a-  
week;  
that he tendered  
to the value of  
2s. in the pound;  
that the tithe of  
his wool was  
only worth 2os.

that he had sow-  
ed nine acres  
with rape seed;

that he knew  
nothing of the  
custom;

that the usual  
method was, to  
lay it in ridges  
before it was  
carried to the  
cloth to be  
threshed; and  
that he had of-  
fered every tenth  
ridge; or 5s.  
an acre;

or the tenth part  
of the seed, de-  
ducting the ex-  
pence of reap-  
ing;

a small quantity of butter which he sold; and he insisted, that the plaintiff was not entitled to any tithe for the produce of the said cows, save twopence halfpenny for each of them for a renewal; that he had tendered to the plaintiff, by laying down a gross sum of three guineas, and requesting him to pay himself thereout, what was due for all titheable matters in the year 1761, save the tithe of rape; but that he had refused to accept of the said tender. He further said, that seven horses and four calves were all the unprofitable cattle which he had upon his farm in the year 1761; that other part of his pasture land had been agisted by several brood mares and barren mares at four shillings and three shillings and sixpence a week, the tithes whereof he had also tendered; but that it was refused, although the satisfaction so severally tendered as aforesaid for tithes arising from his pasture lands in the said year amounted to two shillings in the pound, and the three guineas so tendered were sufficient for the tithe herbage of the pasture ground and agistment of the mares and foals in the said year. He further said, that in the said year he had kept several sheep, which he shored, and had therefrom several fleeces of wool, the full value of the tithe of which was twenty shillings; and that he had long ago paid the plaintiff the tithe thereof. He further said, that in the said year he had sowed nine acres of land with rape seed, and had reaped the same in the manner as set forth in the bill; and he set forth the quantity he had sold, and the value of the same; and averred, that the tithe thereof was worth about two pounds, two shillings, and fivepence, and no more. He denied that he knew, or had ever heard, that there was a custom or method of tithing rape seed upon the cloth whilst in the field where the same grew; and said, that if such a method of tithing were introduced and allowed, it would occasion more expence to the owner than the value of the tenth produce of the crop would amount to. He further said, that when the rape was cut and laid upon the ridges, and before the same was carried to the cloth to be threshed, he sent for the plaintiff's tithing-man, and offered to him the tenth ridge of the rape, and that the odd numbers should be divided in proportion between them for the tithe of the said rape seed; that the tithing-man refused the said offer; that he thereupon offered to pay him five shillings an acre for every acre of the said rape, as a satisfaction for the tithe thereof, provided, that in case he grew any more rape, the plaintiff would accept five shillings an acre for the tithe thereof; that five shillings an acre was the usual price paid in the country for the tithe of rape seed, and was as much as it was worth; but that the tithing-man had also refused to accept the said offer; that he thereupon offered to let him have a tenth part of the said rape seed, provided he would allow him a tenth part of the charges after the reaping thereof; but that the plaintiff insisted on having a tenth part of the value of the rape seed, without allowing



allowing any charge at all. He further said, that about the eighth of *January* last he paid to the plaintiff's servant for the tithe hay in 1761 not taken in kind, and did then tender to the plaintiff, three guineas; that the said sum was more than the tenth of the value of such rape seed, including the charges, and at the same time desired that he would give the change thereout, but that he had refused to accept the same. He further said, that he had tendered to the plaintiff three guineas for the tithe herbage or agistment in the said year, and desired him to take out of such money what was so due for such tithe; and that the said sum was more than sufficient to pay for all the tithe herbage and agistment then due to him; but that he refused to accept of the same.

HUGILL  
against  
COATES.

that he had tendered the full value of the tithe of the seed;

that he had tendered the full value of the agistment tithe.

The plaintiff replied; the defendant rejoined; but no witnesses were examined on either side; and upon hearing counsel; and on full debate of the matter;

THE COURT ordered the bill to be dismissed as to the tithe of wool, the same appearing to have been paid to the said plaintiff, but without costs; and that the deputy remembrancer take an account of what was due for the tithe of the rape seed which the defendant had in the year 1761; of what was due for the tithe agistment of all such barren and unprofitable cattle as were agisted by him for hire or otherwise in the said year; and do tax the plaintiff his costs of this suit, so far as it related to the above matters.

The bill dismissed as to tithe wool;

and the defendant ordered to account for the tithes of the rape seed and agistments.

The deputy made his report, dated the sixteenth of *July* 1764; and on the twenty-fifth the said report was ratified and confirmed, and the defendant ordered to pay two pounds, three shillings, so reported due for his tithes, with subsequent costs to be taxed, viz. the tithe of rape seed, one pound, ten shillings; and for agistment tithe, thirteen shillings.

#### THE COURT FULL.

STIRLING against BURROUGH.

*Hertfordshire*, 21<sup>st</sup> February 1764.

HILARY TERM  
4. GEO. 3.

THE bill stated, that *M. Roberts*, late of the hamlet of *Bovingdon*, in the parish of *Hemel Hempstead*, in the county of *Hertford*, clerk, deceased, did, by will dated the sixteenth of *September* 1701, give an annuity of ten pounds to be paid on *Michaelmas* in every year to the minister or curate of a certain chapel of *Bovingdon*, and thereby charged all his estates, mortgages, and concerns at *Shantock*, in the said county, with the payment of the annuity; that the testator died without altering or revoking the same; that thereupon *Jane* his wife, by virtue of such will, possessed herself of his real and personal estate;

The curate of the chapel of *Bovingdon*, in the parish of *Hemel Hempstead*, in *Hertfordshire*, is entitled to an annuity of 10*l.* a-year.

that

STIRLING  
against  
BURROUGH.

that she afterwards intermarried with *Robert Crawford*; that he being seised thereof, in order to secure the said annuity, did, by deed dated the twenty-eighth of *October* 1737 inrolled in the court of chancery, subject *March Mead*, situate in the parish of *Berkhampstead Saint Mary*, otherwise *Northchurch*, containing three acres, and a close of arable land, containing four acres, in *Froxmore*, in *Hemel Hempstead*, and *Great Mead*, in *Bourn End*, in the parish of *Berkhampstead Saint Mary*, with the appurtenances, to the payment of the said annuity, and conveyed the same to the defendants *F. King* and others, their heirs, &c. in trust to pay the same; that *Robert Crawford* died in the year 1759, having made his will, and devised his real estate, charged with the payment of the said annuity, to *Sarah* his wife; that she had since intermarried with the defendant *Burrough*; that in *February* 1760 the plaintiff was duly nominated and appointed curate of the said chapel of *Bovingdon*, and thereby become entitled to the said annuity from *Michaelmas* 1759, and had accordingly received of the said defendant in *October* 1760 the same; that at *Michaelmas* 1762 there remained due twenty pounds, for the payment of which the plaintiff had often applied to the said *Burrough*, who had refused the same. The bill therefore prayed, that the defendant *Burrough* and his wife might be decreed to pay the plaintiff the said sum of twenty pounds so due to him as aforesaid; or that the defendants the trustees in the said deed might be decreed to act in execution of the trusts reposed in them, and raise and pay the plaintiff the arrears and growing payments of the said annuity as the same should become due during such time as the plaintiff should continue curate of the said chapel.

The defendant *Burrough* and his wife admitted the facts as stated in the bill; but submitted to the Court, that as the plaintiff did not reside in the hamlet of *Bovingdon*, and had not performed the office of curate there, but had neglected the same, he was not entitled to the said annuity.

The defendants the trustees put in the like answer, and submitted to the judgment of the court whether the plaintiff was entitled to the same having not acted in the said trust.

The cause came on to be heard upon the bill and answer; and upon hearing counsel; and reading an indenture, dated the twenty-eighth of *October* 1737, signed by *R. Crawford* and others; and also the answer;

THE COURT ordered, adjudged, and decreed, that the defendant *Burrough* do forthwith pay the sum of twenty pounds to the plaintiff, curate of the said chapel of *Bovingdon*, for two years arrears of the said annuity in the pleadings particularly mentioned, due and ending on *Michaelmas Day* 1762; and that the defendants the trustees do for the future demand and receive the said

said annuity of ten pounds from the said defendant *R. Burrough*, as it shall become due, and pay over the same to the plaintiff so long as he shall continue curate of the said chapel; each party to stand and abide by his own costs of this suit.

STIRLING  
against  
BURROUGH.

THE COURT FULL.

ROOKE, Widow, against TOLLPUTT.

HILARY TERM  
4. GEO. 3.

Kent, 23d February 1764.

THE bill stated, that the dean and chapter of the cathedral and metropolitical church of *Christ*, in the city of *Canterbury*, were owners and rectors of the appropriate rectory, and also patrons of the vicarage of the parish of *Saint Paul*, near and without the walls of the said city; that the tithes of the said parish of *Saint Paul*, divided into two portions, called the *Tithery of Saint Lawrence* (because the same, with several tithes in other parishes, formerly belonged to the dissolved hospital of *Saint Lawrence*) did, and for several years had belonged to the plaintiff; that the plaintiff for twelve years then past had been seised in her *demefne as of fee simple*, or otherwise well entitled to, and had been owner of all the tithes, both great and small, predial, personal, and mixed, and of what nature and kind soever, yearly arising within the said *Tithery of Saint Lawrence*, and during such time was entitled to, and ought to have enjoyed and received all and every the tithes aforesaid which had arisen within the said parish and tithery, and to all sum and sums of money which of common right, or by any customs within the same, had been paid, or which were payable in lieu thereof; that the inhabitants of any messuages, houses, or buildings within the said parish and tithery had of right been always used and accustomed to pay yearly to the owners for the time being of the said tithery, their farmers or lessees, the sum of two shillings for every twenty shillings rent of the said houses, messuages, or buildings; that the defendants had been severally, during the said time, inhabitants of divers messuages therein, and had also held and occupied divers lands, gardens, yards, and orchards, and had growing or arising from thence hops, onions, carrots, turnips, cabbages, beans, pease, cherries, raspberries, plumbs, apples, pears, gooseberries, currants, pigs, poultry, and other titheable matters, for all or any of which the said defendants, or any of them, had not set out any tithe in kind, or made the plaintiff any satisfaction whatsoever; that the defendant *Airson*, as vicar of the said parish, had set up a right to the tithes and customary payments now claimed by the plaintiff; and insisted, that the late vicar thereof had received the same; but the plaintiff insisted, that if he had received them, he had never received them in his own right, but merely by the permission of *Sir G. Rooke*,

The owner of the tithery of *St. Lawrence*, in the manor of *Barton*, is not entitled to any tithes of houses, &c. arising in the parish of *St. Paul*, near the walls of *Canterbury*.



ROOKE  
against  
TOLLPUTT.

See Roke v.  
Horne, vol. ii.  
page 530.

to whom he was chaplain, formerly owner of the said *Tithery of Saint Lawrence*, during his incumbency, as a reward for his services; that the plaintiff herself had occupied several houses and buildings within the said parish during the time that *T. Lamprey* was vicar thereof; and that he had never demanded of her any tithes or customary payments in lieu thereof. The bill also set forth an original terrier made in 1678, entitled, "A Terrier invented of all the Tithes and Portion of Tithes within the Parish of *Saint Paul*, belonging to the Rectory thereof, not being any Part of the Manor of *Barton*, or the Tithes of *Saint Lawrence Parsonage*;" that the said terrier (one part whereof was in the custody of the dean and chapter, and the other part remained with the owners of the said tithery) particularly set forth the lands in the said parish, the tithe of which belonged to the rectory, and further declared, that the residue of the lands within the said parish being parcel of and belonging to the manor of *Barton*, the tithes thereof belonged to the *Tithery of Saint Lawrence*. The bill further stated, that the houses, &c. occupied by the defendants lay within the manor of *Barton*, and were not named or specified in the said terrier. The bill also stated, that the plaintiff, as owner and proprietor of all the tithes and tenths belonging to the dissolved hospital of *Saint Lawrence*, having some time since exhibited her bill in this court against the said dean and chapter, *T. Lamprey* the then vicar, and *J. Austen*, her right to the tithes of the said tithery was established by a decree made in the said cause; and that the aforesaid terrier was mentioned therein. The bill also stated, that all or most of the defendants had formerly paid, and other occupiers and inhabitants of houses and lands within the said parish and *Tithery of Saint Lawrence* did then pay, great and small tithes, and such tithes for houses as aforesaid, to the plaintiff; but that the defendants did then refuse to account to the plaintiff for the same. The bill therefore prayed, that the defendant *Tollputt* and others might be respectively decreed to come to a fair account with the plaintiff for all such tithes and customary payments as aforesaid, and might be compelled to pay and answer such tithes and customary payments, or the just value thereof, to the plaintiff, as in each and every of the said years remained due and unsatisfied; that the plaintiff's right to the said tithes and customary payments for houses and buildings within the said parish of *Saint Paul* and tithes of *Saint Lawrence*, might be established by a decree of this court; and that the plaintiff might have the benefit of the above-mentioned decree and proceedings.

The defendant *Tollputt* and others said, that they could not set forth into how many portions the tithes of the parish of *Saint Paul* was divided; but believed, that some part thereof belonged to the dean and chapter of *Canterbury*, as rectors thereof, and that some part thereof was called by the name of the *Tithery of Saint Lawrence*. They admitted, that the plaintiff had been, for ten

ten years past, entitled in her own right, as owner and proprietor, to the said portion of tithes belonging to *the Tithery of Saint Lawrence*; but whether of all manner of tithes, both great and small, predial, personal, and mixed, they could not set forth; and they denied, that they had ever heard that the plaintiff was entitled to any tithe or tenths of the rents of messuages or other buildings. They also admitted, that they had occupied houses and lands lying in those parts of the parish of *Saint Paul* which were within the county of *Kent* and the liberty of the city of *Canterbury*; and they set forth all the houses by them inhabited, with the yearly rents thereof, and likewise an account of all the titheable matters and things which grew, &c. on their said lands during the time in the bill mentioned; but they insisted, that the plaintiff had not, nor ever had, any right to take and receive of them respectively the said tithes, or any satisfaction for the same, they of right belonging to the vicar of the parish of *Saint Paul*, and to whom all the preceding occupiers of the same premises had, for time immemorial, made satisfaction for the same.

ROOKE  
against  
TOLLPUTT.

The defendants the dean and chapter, and the defendant *Airson* the vicar, said, that they believed the tithes of the parish of *Saint Paul* had been for a long time past divided into three portions; that one portion thereof belonged to the dean and chapter, another to the plaintiff, and the remaining to the vicar; that the portion of tithes to which the plaintiff was entitled was *the Tithery of Saint Lawrence*, because the same did belong formerly to the hospital of *Saint Lawrence*, in the said parish; that the dean and chapter, in right of their church, were entitled to the rectory of *Saint Paul*, and the great tithes belonging thereto; that the defendant *Airson* having been inducted into the vicarage of the said parish and parish church of *Saint Paul*, on the thirty-first of *January* 1761, on the presentation of the said dean and chapter, was thereby entitled to all tithes and customary payments in lieu thereof, of, for, and in respect of all dwelling houses, buildings, and gardens in the said parish, which did not lie within the limits of the *Tithery of Saint Lawrence*; that *the Tithery of Saint Lawrence* extended only to the tithes of certain lands pertaining to the manor of *Barton*, otherwise *Long Port*, called *Barton Field*, *Three Cornered Croft*, *Busby Croft*, and *Babes Hill*, in the said parish of *Saint Paul*, as appeared by a certificate returned by certain commissioners by virtue of a commission issued under THE GREAT SEAL OF ENGLAND, in the seventeenth year of *Henry the Eighth*, authorizing such commissioners to seize into the king's hands all the possessions and hereditaments belonging to any hospital in the county of *Kent* chargeable with first fruits and tenths, according to the tenor and effect of an act of parliament passed in the thirty-seventh year of the said king; that the dwelling houses,

&c.

ROOKE  
against  
TOLLPUTT.

&c. for and in respect of which the plaintiff demanded tithes were not part of the lands mentioned in the said certificate and returned as within the limits and extent of *the Tithery of Saint Lawrence*. They admitted, that the plaintiff had formerly instituted a suit in this court, as in the bill is mentioned, for the tithe of some field land; but insisted, that it did not any ways concern the tithes of dwelling houses, buildings, or gardens in the said parish; neither was the same ever in question in the said suit. They said, that the terrier mentioned in the bill did not in the least prejudice or effect the defendant *Airson's* title to the tithes of dwelling houses, &c. in the said parish, the same not being in question at the time the said terrier was made; and he submitted how far the same was conclusive; but insisted, that in case the same should be so considered, it could be only conclusive between the plaintiff, as owner of the said tithery, and the dean and chapter, as rectors of the parish. They further said, that they knew not that the dwelling houses, &c. in the occupation of the other defendants, for which the plaintiff demanded tithes, were within the manor of *Barton*; but insisted, that if they were holden of the said manor, they were not within *the Tithery of Saint Lawrence*; and that they had been informed, that all tithes and customary payments in lieu thereof, for or in respect of all dwelling houses, &c. not within *the Tithery of Saint Lawrence*, had been constantly paid to the vicars of the said parish.

The defendant *Tollputt* and others by their further answer spoke as to the portions of tithes as above mentioned; and said, that they had always considered the tithes concerning the houses, &c. to be vicarial tithes, and had refused to pay the same to the plaintiff. They also admitted, that the dean and chapter were owners, as rectors of the appropriated rectory of the parish of *Saint Paul* and patrons of the vicarage; and said, that they believed that there was an ancient custom immemorially used and observed within the parish, or some part thereof, for the payment of two shillings in the pound, according to the respective rents of the houses, &c. in lieu of tithe and all other customary payments for the same; but denied that they had ever paid or accounted to the plaintiff for the tithes of the houses, &c. they occupied in the said parish, because the same did not lie within the said tithery.

The defendant *Tollputt* and some others said, that they had, for many years, paid *O. Evans*, formerly vicar of *Saint Paul's*, tithes, and customary payments in lieu thereof, for houses, &c. by them occupied; and that he had received the same in his own right, and not as a gratuity from *Sir G. Rooke*, as stated in the bill.

All



All the defendants said, that they had constantly paid the vicars of the said parish two shillings in the pound, according to the respective rents of the houses, buildings, and gardens.

ROOKE  
against  
TOLLPUTT.

The defendant *Tollputt* and others admitted, that they had paid small tithes, and particularly the tithe of hops growing on lands within the said tithery and parish; and that they then paid the same to the plaintiff. They said, that they could not set forth whether the messuages, &c. were situate and lying within the manor of *Barton*, they being strangers to the boundaries thereof; but that no quit rent had ever been demanded of them as due to the lord of the manor; and that they believed, they did not lie within the said tithery: but the defendant *Jehen* admitted, that they had paid quit rents to the lord of the manor of *Barton* for their houses, &c. and also tithes for the same to the vicar of *Saint Paul*, and to no other person.

The other defendants spoke to the same purport, as also to the customary payment of two shillings in the pound; and said, that they had never paid to the plaintiff any great or small tithes, or any composition for their houses, &c.

The dean and chapter admitted, that they were owners, as rectors, of the appropriated rectory of the said parish, and also patrons of the said vicarage; and insisted on the division of the said tithes into three parts; that the third and last portion was anciently and of right the property of the vicar of the said parish; and that the said vicarage or the vicar thereof was anciently endowed with the said third portion of tithes. They said, that they had searched, but could not find the original donation or endowment of the said vicarage; but believed, that such portion of tithes, as likewise the portion belonging to the plaintiff, were originally derived from and taken out of the rectory of the said parish; and that the vicar's said portion was not taken out of the tithes of *Saint Lawrence*, the said tithery being set apart for the maintenance of the poor of the hospital of *Saint Lawrence*; and they insisted, that it did not appear by the terrier that the tithes or customary payments for houses, &c. were part of the *Tithery of Saint Lawrence*, the same extending only to the tithes of lands lying within or being part of the said tithery; and that all the tithes which constituted the said portion belonging to them, and the several places from whence they arose, were particularly set forth in the said terrier: and they spoke of *O. Evans*, the former vicar, receiving the said tithes in his own right, and not as a gratuity; and also as to the payment of two shillings in the pound in the said parish, and not in the said tithery, for and in lieu of tithes and all other customary payments for the same, to the vicar. They admitted, that they had in their custody the aforesaid terrier.

Rooke  
against  
TOLLPUTT.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel; and reading an instrument, dated 1678, purporting to be a *terrier* indented of all the tithes and portion of the tithes within the parish of *Saint Paul*, near the city of *Canterbury*, belonging to the rectory of the said parish, not being part of the manor of *Barton*, or the tithes of *Saint Lawrence Parsonage*; the exemplification of an inquisition, dated the twenty-second of *June*, in the seventeenth year of *Queen Elizabeth*, relating to the tithes in the *Tithery of Saint Lawrence*; a grant, dated the thirteenth of *July*, in the seventeenth year of *James the First*, to *J. Buck* and others, of the said *Hospital of Saint Lawrence*, in the parish of *Saint Paul*, with all the tithes thereto belonging; the proofs for the plaintiff; and hearing the defendant's counsel; and reading on their behalf a copy of the certificate mentioned in the answer made and returned by virtue of a commission issued under THE GREAT SEAL OF ENGLAND, dated the fourteenth of *February*, in the thirty-seventh year of *Henry the Eighth*; and several other proofs for the defendants; and on full debate;

THE COURT ordered a trial at law upon the following issue, "Whether the plaintiff, as owner of the *Tithery of Saint Lawrence*, in the parish of *Saint Paul*, is entitled to a customary annual payment of two shillings for every twenty shillings rent by the year for the houses, messuages, and buildings in the said parish of *Saint Paul*, in the occupation of the defendant *J. Tolputt* and others, or any and which of them?" to be tried by a special jury; the judge to indorse on the *posse* any special matter; the defendants to admit the plaintiff entitled to the tithes belonging to the late dissolved hospital of *Saint Lawrence*, commonly called the *Tithery of Saint Lawrence*; the plaintiff to admit the defendant *J. Airson*, clerk, to be vicar, and the dean and chapter to be rectors of the appropriated rectory of *Saint Paul* and patrons of the vicarage; all books, papers, and writings to be produced; and the consideration of costs, and further directions to be reserved till after the trial shall be had.

A trial was accordingly had, and a verdict was given on full evidence for the defendants the dean and chapter and the vicar.

THE COURT therefore, on the fifth of *December* 1764, ordered the bill to be dismissed with costs both at law and in this court.

ROOKE, Widow, *against* HAMOND.HILARY TERM  
4. GEO. 3.*Kent, 24th February 1764.*

THE bill stated, that the plaintiff, for twelve years past, had been seised and possessed of, in fee simple, a portion of the tithes of all titheable matters and things arising within a certain tithing in the parish of *Saint Paul*, near and without the walls of the city of *Canterbury*, called by the name of *the Tithery of Saint Lawrence*, formerly part of the possessions of, and belonging to the dissolved hospital of *Saint Lawrence*, in the said parish; that the defendants, for the same time, had held and occupied in the said parish, within the plaintiff's tithery, arable, meadow, pasture, and wood land, and had raised and received from the said lands corn, grain, wood, hay, hops, flax, sainfoin, trefoil, clover, and other seeds; that they had also kept thereon colts, calves, lambs, pigs, eggs, chickens, ducks, turkeys, and other poultry, honey, wax, onions, carrots, turnips, parsnips, and other roots, beans, peas, apples, pears, cherries, gooseberries, currants, and other fruit, herbs, and garden stuff; that they had also fed and depastured upon the said lands, and taken in by way of agistment, great quantities of horses, mares, colts, cows, calves, steers, runts, bullocks, and other barren and unprofitable cattle; and that they also had had great quantities of wool, and divers other titheable matters and things, for all or any of which the defendants had never set out the tithe, or made the plaintiff any satisfaction. The bill further stated, that the several parcels of land so occupied by them lay in the parish of *Saint Paul*, within *the Tithery of Saint Lawrence*; that no part thereof was tithe free; that the said tithery appeared, by an ancient terrier in 1678, to be in the said parish; that the tithes of the residue of the lands in the said parish, which were parcels of and belonging to the manor of *Barton*, belonged to *the Tithery of Saint Lawrence*; that the lands occupied by the defendants were not any part of the lands mentioned in the said terrier; and that therefore they belonged to the manor of *Barton*, and the tithe thereof belonged to the owner of *the Tithery of Saint Lawrence*; that the defendant *Hamond* the elder had been, for some years past, tenant of the said tithery; and that during the time he occupied the same, he had taken the tithe in kind, or received some satisfaction in lieu of the tithes of the lands now occupied by him and his son; but that notwithstanding which they had refused to account with the plaintiff for any the titheable matters and things aforesaid, or to make her any satisfaction for the same. The bill therefore prayed, that the defendants might be decreed to account for and pay to the plaintiff the value of the tithes of the said titheable matters and things during the said time, *Michaelmas* 1760; and that the plaintiff's right to the tithes of the said lands in the respective

The lands lying in the manor of *Barton*, in the parish of *St. Paul*, near the city of *Canterbury*, are not within *the Tithery of St. Lawrence*.



ROOKE  
against  
HAMOND.

occupations of the said defendants, as lying within the said plaintiff's tithery, might be established.

The defendants admitted, that the plaintiff was entitled to the tithe of all corn, grain, and all other titheable matters whatsoever arising within *the Tithery of Saint Lawrence*, or to some recompence in lieu thereof.

The defendant *Hamond* the elder said, that about the year 1733 he purchased several parcels of land lying in the parish of *Saint Paul*; that he occupied the same till July 1754; and that since that time the defendant his son had been in possession thereof.

The said defendant insisted, that neither the said lands nor any part thereof did lie within the plaintiff's *Tithery of Saint Lawrence*, or the titheable places thereof; and that they were tithe free, and absolutely discharged from the payments of any tithes whatsoever: and he set forth what titheable matters he had had; and the father admitted, that he had held the said tithery of the plaintiff for some time.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel; and the defendant's counsel objecting, that the dean and chapter of *Canterbury*, as owners and rectors of the appropriated rectory, and *J. Airson*, clerk, as vicar of the parish of *Saint Paul*, were not parties to this suit, the plaintiff claiming only a portion of tithes within the said parish; and the plaintiff's counsel waiving that part of the prayer of the bill with regard to the establishment of the plaintiff's right to the said portion of tithes within the parish; the Court over-ruled the objection; and on full debate of the matter;

THE COURT ordered a trial at law upon the following issue,  
“ Whether the lands particularly mentioned and set forth in the  
“ pleadings of this cause. in the occupation of the defendants,  
“ lie within *the Tithery of Saint Lawrence*, in the parish of *Saint*  
“ *Paul*, without the walls of the city of *Canterbury*, in the county  
“ of *Kent*?” to be tried by a special jury.

The cause now came on, on the twenty-sixth of *November* 1764, upon *the equity reserved*; when the defendant's counsel informing the Court, that the issue directed by the said decree came on to trial, and that a verdict was given by the jury, on full evidence, in favour of the defendants,

THE COURT ordered the bill to be dismissed with costs both at law and in this court.

THE COURT FULL.

TUTHILL

TUTHILL *against* DAY.HILARY TERM  
4. GEO. 3.*Somersetshire, 24th February 1764.*

THE bill stated, that the plaintiff, in the year 1734, was duly instituted and inducted into the vicarage of the parish and parish church of *Compton Bishop*, in the county of *Somerset*; and that he thereby, or by immemorial custom or prescription, became and was entitled to the following tithes and customary payments, *viz.* to tithes in kind of all wool, and apples gathered from gardens or orchards in the parish; to two shillings for every milch cow, and to one shilling and sixpence for every milch heifer, in lieu of tithe milk, under the denomination of *cow white*; to six shillings and eightpence for every calf fallen within the parish from six to ten; to two shillings and sixpence for every lamb yeaned from six to ten; to the tithe in kind of pigs farrowed, *viz.* one where there are from six to ten; to twopence for every colt fallen therein; to sixpence for every acre of grazing ground in the parish fed or depastured with dry, barren, or unprofitable cattle; to fourpence for every acre of after-grass; to twopence yearly for every inhabitant in the said parish, for him and herself, and for each person of the family, whether child or servant, capable of receiving the holy communion; and to divers other vicarial tithes in the said parish; that all the said tithes and customary dues had, for time immemorial, been paid and payable to the plaintiff's predecessors, vicars thereof, and ought to have been paid to him as vicar; that from 1752 the defendant had occupied and possessed divers farms and lands within the parish, consisting of meadow, pasture, orchard, and other grounds; that he had kept a large dairy; that he had sheep, from which he yeaned lambs; that he had shorn great quantities of wool; that he had also had a quantity of apples, and divers other titheable matters and things, the tithes of all which were due to the plaintiff as vicar; but which he had refused to pay.

The vicar of *Compton Bishop*, in *Somersetshire*, claims certain *modus* in lieu of the tithes of milk, calves, lambs, pigs, colts, grazing grounds, after-grass, and *Easter* offerings, and the tithes of apples and wool, in kind.

The defendant admitted, that the plaintiff was vicar of the parish, and entitled to tithes in kind for apples and wool; to two shillings yearly for every milch cow, and one shilling and sixpence for every heifer, in lieu of tithe milk; to six shillings and eightpence for every calf from six to ten; to two shillings and sixpence for every lamb from six to ten; to the tithe in kind of pigs farrowed from six to ten; for every colt fallen, twopence; and to sixpence for every acre of land fed with dry, barren, or unprofitable cattle; but he insisted, that the same was paid by the out-dwellers only from whom the vicar had no cow white, and not by parishioners from whom he had cow white. He also insisted, that the plaintiff was paid by the out-dweller, but not by the parishioner, fourpence yearly for every acre of

The defendant admits, that the vicar is entitled to the tithes of apples and wool in kind; and to the *modus* in lieu of milk, calves, lambs, pigs, colts, and grazing ground; but says, that they are payable only by out dwellers;

TUTHILL  
against  
DAY.

denies, that he  
is entitled to any  
Easter offerings;  
says, that he is  
lessee of the  
great tithes of  
the parish;

and, setting forth  
his several es-  
tates and tithe-  
able matters,

says, that it was  
understood be-  
tween him and  
the vicar, that  
neither of them  
should pay tithes  
to the other.

after-grass in the said parish, nothing being due to him by the parishioner for such grazing ground or after-grass. He denied that the plaintiff was entitled to any oblations in the parish, or that he had ever demanded any of him; and said, that he did not know what other titheable matters the plaintiff was entitled to therein. He further said, that the parish of *Compton Bishop* was a rectory impropriate with a vicarage; and that he had for many years past, and from 1752, occupied the parsonage and great tithes of the said parish, as tenant to the lessee thereof, from the dean and chapter of *Wells*; that the glebe thereof, besides arable land, consisted of a dwelling-house, an orchard, and about sixty acres of pasture ground, whereon he admitted that he had kept a dairy; that for several years past he had held an estate at *Bourton*, in the said parish, where he always resided; that the said estate consisted, exclusive of arable, of about twenty-three acres of pasture land; but that he never kept a dairy there, the same being almost wholly used by him for his oxen and young stock; that the plaintiff had always received of him the tithe apples of his orchard; that he had within the said parish and titheable places thereof several sheep and lambs; but that he always paid for wintering the ewes in other parishes where the lambs generally fell: and he set forth the quantity of wool, the number of cows, heifers, calves, mares, and colts; and said, that he had not had, within the said time, any unprofitable cattle, except heifers till they came to the pail, or steers till they came to the plough, which were not to be deemed unprofitable: and after setting forth the pigs, after-grass, and *Easter* dues, he had had, he denied that the plaintiff had ever applied to him for payment of any small tithes from the said impropriate rectory, nor did the defendant ever apply to him for any great tithes from the said vicarage, it having been always understood between them, that neither party was to pay any such tithe, but to be considered as discharged therefrom, except that about ten years ago upon the plaintiff saying, that he ought to pay some consideration for the depasturing his sheep upon *Mendip Hills* and lands (no part of the said rectory), he agreed to pay him five shillings a-year in satisfaction for all tithe wool, which he agreed to accept, and had never demanded any more of him on that account; and that the plaintiff being indebted to him, he was ready and willing to account with him for the same. He denied, that he had ever driven any of his cows, sheep, or heifers, or concealed the same with intent to defraud the plaintiff of his tithes; or that he had ever refused to pay or satisfy him what he was justly entitled to; or that he had ever subtracted the same; and he said, that he believed that no oblations were due or payable to the vicar by the custom of the said parish or otherwise.

The



The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides; and reading the proofs taken in the cause;

TUTTILL  
against  
DAY.

THE COURT ordered the deputy remembrancer to take an account of what was due from the defendant to the plaintiff for the tithes demanded by the bill; and the defendant to pay to the plaintiff his costs of this suit, to be taxed.

The defendant  
ordered to ac-  
count.

STIRLING, D. D. *against* KING.

Hertfordshire, 21st May 1764.

EASTER TERM  
4. GEO. 3.

THE bill stated, that the plaintiff *Johnson*, clerk, had been for many years instituted and inducted to the vicarage and parish church of *Hemel Hempstead*, in the county of *Hertford*, and was thereby, or by means of some ancient endowment, usage, custom, or prescription, become entitled to all the tithes of hay, underwood, lambs, wool, apples, pigs, geese, hemp, flax, turnips, clover seed, and other vicarial tithes arising therein, and also, of common right, to *Easter offerings* from every master of a family, at the rate of twopence a head for himself, his wife, and those children and servants who were capable of receiving the holy sacrament; that there were within the said vicarage the two chapels of *Bovingdon* and *Flandan*; that it had been customary for the vicar of *Hemel Hempstead* to nominate one or more curate or curates to the said chapels (a); that he accordingly, by deed dated the thirteenth of *February* 1760, nominated and appointed the plaintiff *Stirling* to be curate of the said chapels; that he thereby empowered him to have, receive, take, and enjoy, to and for his own use and benefit, all the small tithes, dues, *Easter offerings*, surplice, and other fees, &c. to them belonging; that the said *Stirling* pursuant to such appointment, entered upon and officiated in the cure of the said chapels; and that he thereby became entitled to all the vicarial tithes and perquisites

The plaintiff  
*Johnson*, as vicar  
of *Hemel Hemp-*  
*stead*, with the  
chapelries of *Bo-*  
*vingdon* and *Flan-*  
*den*, in *Hertford-*  
*shire*, annexed,  
states,

that on the 13th  
of *February*  
1760 he ap-  
pointed the  
plaintiff *Stirling*  
to be chaplain of  
the said chapels,  
ries; and that he  
thereby became  
entitled to the  
small tithes  
thereo;

(a) On the third of November 1729, the cause of *Price v. Platt* came before the court. The bill stated, that the plaintiff was perpetual curate of the chapel of *Bovingdon*, in the parish of *Hemel Hempstead*, and claimed all tithes, except the tithes of corn and hay, arising within the said chapelry. The defendants denied, that *Bovingdon* was, to their knowledge, a perpetual curacy; but admitted, that there had been immemorably a vicarage of *Hemel Hempstead*, of which the chapelry of *Bovingdon* was parcel; and said, that they believed that the plaintiff had been appointed to the said curacy during pleasure only; and that he had not become lawful curate there in the nature of an incumbent. They further said, that they had

paid all tithes due within the said chapelry to the vicar of *Hemel Hempstead*; and denied that the curates of *Bovingdon* had been immemorably entitled to any small tithes or *Easter offerings* arising in the said chapelry, or to any thing in lieu thereof. The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; but the plaintiff refused to attend the hearing of the cause; and it came on at the defendant's request, before *PENNINGTON*, Chief Baron, and *CARTER*, Baron, when the Court, on hearing counsel on both sides; and on reading the plaintiff's nomination to the curacy; and on full debate; ordered the bill to be dismissed with costs.

STIRLING  
against  
KING.

that the defendants had since that time had several titheable matters, the tithes of which they had refused to pay.

arising therein; that the defendants had held and occupied, for three years past, divers lands and tenements within the said chapelries and the titheable places thereof, and had kept thereon cows, and sheep which had yeaned lambs, and produced wool; that they had also gathered from the gardens and orchards of their grounds several bushels of apples, with which they had made cyder; that they had also grown thereon several acres of turnips; that they had several measures of seed clover, and many cords of underwood, from off their premises; and that, from the numbers of which their families consisted, they in each year owed two shillings and sixpence and upwards for *Easter* offerings; that not only the said tithes, but several sums of money in lieu thereof, were due, but which they had refused to pay. The bill therefore prayed, that the defendants might be decreed to come to a just and fair account with the plaintiff *Stirling* for the tithes and *Easter* offerings so by them withheld and subtracted, and to pay him all such sum and sums of money as, upon taking the said account, should be due to him for the said years.

The defendant *King* says, that he holds lands in *Bovingdon*; that the chaplain so appointed by the vicar is only entitled to 20s. a year on condition that he resides in the parish;

that *Stirling*, though he officiated in the cure, never resided as chaplain in the parish; that the vicar was also non-resident for more than eighty days in the year 1760; and that the appointment was therefore void;

The defendant *King* and three others, inhabitants of *Bovingdon*, admitted, that the plaintiff *Johnson* was vicar of the parish; that he had made such deed to *Stirling* as stated in the bill; that there were within the vicarage the two chapels as aforesaid; and that the vicar nominated one or more chaplains to perform divine service there; but they insisted, that it had been customary for him to oblige his chaplain to reside therein; that the parishioners of *Bovingdon* were, in consideration of his so residing therein, obliged to pay to the vicar twenty shillings yearly, as appeared by the archives in the *Bishop of Lincoln's* registry; and that the same had been constantly paid ever since the year 1225 towards the support of a true chaplain in the chapel of *Bovingdon*; and that as no person could properly be so denominated unless he constantly lived and resided there, and the plaintiff *Stirling* had not so resided there, he was not entitled thereto; and they said, that they were entire strangers to the contents of the deed of the thirteenth of *February* 1760. They admitted, that *Stirling* had, at times, officiated as chaplain of the chapel of *Bovingdon*; but averred, that he had never resided there as chaplain; and therefore insisted, that he was not entitled to receive the said tithes &c.; and that as the plaintiff *Johnson* had been voluntarily absent from the said benefice for eighty days, and more, in the year 1760, the said deed was void. They also admitted, that they had, for some years past, occupied several farms in *Bovingdon*; and they set forth an account of all the titheable matters and things which they had on their said lands, together with the values of the tithes thereof had the same been payable in kind; but they insisted, that there had been, for time

time immemorial, ancient customs, as in their answers mentioned, for the occupiers of the farms to pay to the vicar of *Hemel Hempstead*, his curate or chaplain of *Bovingdon*, the *modus* therein-mentioned, in lieu of all manner of small tithes and *Easter* offerings; and that the plaintiff, on the 23<sup>d</sup> of *November* 1761, received the said sums in full for the said customary payments due at *Michaelmas* 1761, for which he gave receipts to the defendants; and they insisted on the same as a sufficient bar to the plaintiff's demands antecedent to that time.

STIRLING  
against  
KING.

that there are certain *modus* payable in lieu of small tithes; and that the same had been paid in full to *Michaelmas* 1761.

The defendants *Gladman* and others put in the like answers, as inhabitants of *Flanden*, for their farms and lands.

The defendant  
*Gladman* an-  
swers.

The plaintiffs replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel for all parties; and on reading the deed poll or nomination of the plaintiff *Stirling* to be curate or chaplain of the two chapels or chapelries of *Bovingdon* and *Flanden*, dated the thirteenth of *February* 1760, and signed by the plaintiff *R. Johnson*, vicar of the said vicarage and parish church of *Hemel Hempstead*; and the *Bishop of Lincoln's* licence to *Stirling*, dated the twenty-third of *April* 1761; and on reading the answers; the proofs in the cause; a receipt signed by *Stirling*, dated the twenty-seventh of *November* 1761, to the defendant *King* for a year's tithe, due at *Michaelmas* 1761; another receipt signed by *H. Topping*, dated the sixteenth of *February* 1724, to the defendant *J. Smith*, for half-a-year's tithe, due at *Christmas* 1724; and upon full debate of the matter;

The evidence  
read.

THE COURT ordered the bill, so far as it prayed an account of the small tithes arising on the lands in the occupation of the defendants during the year 1760 to *Michaelmas* 1761, and also so far as the same demanded the payment of *Easter* offerings from the defendants during the said respective times, to be dismissed with costs.

The bill dismissed  
as to the de-  
mand of tithes  
from the 23<sup>d</sup> of  
*February* 1760  
to *Michaelmas*  
1761;

THE COURT further ordered the said bill, so far as the same demanded the payment of tithes and *Easter* offerings from *Gladman*, as occupier of *Newhouse Farm*, in the chapelry of *Flanden*, to be dismissed, with costs relating thereto, it appearing by the said defendant's answer, that he had not occupied the said farm since *Michaelmas* 1761.

and as against  
*Gladman* for  
*Newhouse Farm*,  
he not having  
held the same  
after *Michaelmas*  
1761.

THE COURT further ordered the bill, with regard to the demand of tithes of wool and lambs from *Gladman* to be dismissed with ten shillings costs; and also with regard to the demand of tithe wood from all the defendants without costs; but that the same be without prejudice to the plaintiff's future demands for the same.

The bill dismiss-  
ed as to wool,  
lambs, and tithe-  
wood, without  
prejudice.

THE



STIRLING  
against  
KING.

The defendants  
ordered to ac-  
count with *Stir-  
ling* for their o-  
ther tithes.

THE COURT further ordered all the defendants to account with *Stirling* for all other titheable matters and things demanded by the bill, which had arisen, renewed, or increased, on the lands by them respectively occupied from *Michaelmas* 1761, and for their *Easter* offerings at twopence a head for every person in their families above the age of sixteen, from the said *Michaelmas* 1761, with costs.

TIMMINS  
4 GEO. 3.

## TIMMINS against WAUGH.

*Worcestershire*, 19th July 1764.

The vicar of  
*Bromsgrove*, with  
the chapel of  
*King's Norton*,  
in *Worcestershire*,  
annexed, is on-  
ly entitled to 1d.  
a cow on *Lam-  
mas* Day from  
the owners of  
lands in *King's  
Norton*, in lieu  
of the tithe milk  
and depasturing  
of such cow;  
and to other *mo-  
duses* for other  
matters.

THE bill stated, that the plaintiffs had been owners and occu-  
piers of lands within the parish or chapelry of *King's Norton*,  
in the county of *Worcester*, for several years; that they had resided  
in the said parish; that there had been immemorially paid, on  
*Lammas Day* yearly, or as soon after as demanded, to the vicar of  
*Bromsgrove*, within the chapelry of *King's Norton*, the following  
*modus*, in lieu of tithes in kind, viz. one penny each for all wood  
cut and burned by the owners and occupiers of land in the said  
parish or chapelry in their respective houses, in lieu of the tithes  
of the wood cut from the tops of timber trees and from hedges;  
one penny in lieu for the tithes of garden stuff; one penny for  
every orchard, in lieu of the tithes of fruit; one penny for every  
cow, in lieu of the tithe of milk and all other tithes for the feed-  
ing or depasturing of such cow; sixpence for every calf fallen,  
in lieu of the tithe of calves; twopence for every fleece of wool  
shorn within the said parish in each and every year, in lieu of  
tithe wool; threepence for every lamb fallen; one shilling for  
each colt folden; twopence for every pig farrowed; one penny  
for every goose hatched; one penny for a swarm of bees, in lieu  
of honey and wax; threepence a-year at *Easter*, in lieu of the  
tithes of eggs; and fourpence for a man, and twopence for his  
wife, at *Easter*, for an *Easter* offering. The bill therefore prayed,  
that the said several *modus* might be established; the plaintiffs  
offering to pay what was or should grow due for such several  
*modus*; and that in the mean time the defendant might be  
restrained by the injunction of this court from proceeding in the  
ecclesiastical court.

The defendant admitted, that the plaintiffs were owners of  
lands in the parish and chapelry of *King's Norton*; that he,  
was vicar of *Bromsgrove* with the said chapelry annexed; that  
tithes in kind had never been paid for wood burnt in the house,  
garden stuff used in the house, milk, calves, sheep, lambs, geese,  
or eggs; but he insisted, that tithes in kind were due for wood  
cut down for sale, and for garden stuff and fruit intended for sale.  
He also admitted, that there might be a *modus* of one penny,  
by the name of a *smoke penny*, for wood burnt in the house,

one

TIMMINS  
against  
WAUGH.

one penny for all garden stuff used in the house, and one penny a cow in lieu of the tithe of milk; but he denied that the last *modus* covered the tithes for the feeding or depasturing of such cow. He also admitted, that the said three *moduses*, and the sixpence for every calf, the twopence for every fleece of wool, the threepence for every lamb, the one shilling for every colt, the twopence for every pig, and the one penny for every goose hatched in the said parish, were payable at *Lammas* yearly; that the threepence in lieu of the tithe of eggs were payable at *Easter*; that fourpence had been paid for every married man, and twopence for his wife; sixpence for every unmarried man; and three halfpence for every female unmarried above sixteen years, at *Easter* yearly, for *Easter* offerings; and that such several sums of money had always been accepted by his predecessors vicars there, in lieu of the several species of tithes and *Easter* offerings; but he said, that fourpence was payable for every son, and not threepence, as stated in the bill. He further said, that the horses, or the greater part of them, kept and depastured by the plaintiffs, were commonly let out for hire, not merely at times only when they had no other employment for them about their respective farms, but that they were chiefly used in drawing coals for sale and goods for other persons for hire; and he insisted, that he had therefore a right to the tithe agistment of such horses. He also insisted, that by the custom of the parish each master of a family residing in the said parish ought to pay him fourpence for every servant man above sixteen years of age, and not threepence as stated in the bill, and threepence for each servant girl above sixteen, for *Easter* offerings. He denied that the plaintiffs had offered to account for and pay all the monies due from them in respect of any *moduses* in lieu of tithes, or any monies, other than the tenders made by them in the consistory court of the *Bishop of Worcester*, which he had refused to accept, because the same were less than were justly due to him, or that they had ever offered to account with or pay him any sums of money for an *Easter* offering for any man or maid servant. He further said, that by an ancient custom there had been paid to the vicars sixpence for every swarm of bees, and two shillings and sixpence for every pair of stones belonging in the ancient corn mills in the said parish, in lieu of honey, wax, and corn mills; twopence for every turkey; sixpence for every unmarried man exercising any trade within the said parish; fourpence for every man servant; and threepence for every maid servant above sixteen years of age, for *Easter* offerings. He insisted, that he was entitled to the tithe in kind for the wool of lambs, turnips sowed in fields, seed clover, hops, garden stuff sowed and planted in fields for sale, for ducks and pigeons for sale, and for the depasturing and feeding cows, cattle, and horses working for hire within the said parish and chapelry. He denied that he had ever insisted on a *modus* for the tithe of pigeons, as he never

TIMMINS  
against  
WAUGH.

never had heard, save by the bill, of any *modus* of one penny for a dove-house; or that the *modus* of twopence for every fleece of wool had always been accepted by the vicar in satisfaction of the tithe of lambs and wool of lambs, as such tithes could not be considered as included in the *modus* for the wool; or that he had ever claimed tithe of turnips which were eaten by sheep shorn within the parish, but only the tithe of such turnips as were eaten off by sheep that were fatted thereon by butchers, and killed by them with their fleeces on, after the time of shearing, that time being in *June*, and the feeding of sheep on turnips being in winter; and he insisted on the tithes of clover seed and hops as vicarial tithes.

The plaintiffs replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel, and reading the proofs in the cause, and on debate of the matter,

THE COURT ordered a trial at law upon the following issue:  
 "Whether it hath been usual or customary, time out of mind, for the owners and occupiers of lands within the parish or chapelry of *King's Norton*, to the vicarage of *Bromf-grove* annexed, in the city of *Worcester*, to pay to the vicar of the said parish on *Lammas Day*, yearly and every year, or as soon after as demanded, a *modus* of one penny, and no more, for each cow, for and in lieu of the tithe of milk, and of all tithes for the feeding and depasturing of cows within the said parish or chapelry?"

THE COURT further ordered the bill to be dismissed, as to all other matters, with costs.

The issue was tried; and it appeared by the *posse* that it was found "that it had been usual and customary, time out of mind, for the owners and occupiers of lands within the said parish or chapelry of *King's Norton*, to the vicarage of *Bromf-grove* annexed, to pay the vicar of the parish on *Lammas Day*, yearly and every year, or as soon after as demanded, a *modus* of one penny, and no more, for each cow, for and in lieu of the tithe of milk, and of all tithes for the feeding and depasturing of cows within the said parish or chapelry."

THE COURT thereupon decreed, that the said *modus* be established with costs, both at law and in this court.

T. PARKER.  
S. S. SMYTHE.  
RICH. ADAMS.  
GEO. PERROTT.

HUTTON



HUTTON *against* STEVENS.*Bucks, 7th February 1765.*HILARY TERM  
5. GEO. 3.

THE plaintiff *Hutton*, as rector of *Maidsmorton*, in the county of *Bucks*, and the plaintiff *Greaves*, as his lessee, claimed of the defendant the tithe of hay for the year 1761.

The rector of *Maidsmorton*, in *Buckinghamshire*, is entitled to the tithes of hay arising on the *Deep Meadow*, the *Middle Meadow*, and the lands called *Buckford*.

The defendant admitted that *Hutton* was rector of the parish, and entitled to all tithes, and particularly to tithe hay growing in the meadows and other titheable places thereof; that in the year 1761 he had occupied a farm in the parish; that he had mowed about six acres thereof, and that the same was made into hay; but he said that *Greaves* had taken the tithes in kind of the said six acres, except only as to fourteen poles and a half thereof, of which thirteen poles and a half lay in *Moreton Meadows*, in the said parish, and one pole in *Deep Meadow*; and that, as he had the fed horses and cattle by him employed in husbandry on the grass which grew on the said fourteen poles and a half, the plaintiffs were not entitled to any tithes therefrom. He further said, as to the rest of the land in the said meadow, that four poles and a half thereof lay in another part of *Moreton Meadows* called *Deep Meadow*; six and a half poles thereof in *Middle Meadow*; and two poles and a half in *Buckford*; and insisted that no part of said last-mentioned lands were liable to the payment of any tithes to the plaintiffs, for that the lands in *Moreton Meadows* had always, for time out of mind, been distributed amongst the several proprietors of lands in the said meadows about *Midsummer* yearly; according to a method in an ancient book called the *Meadow-book*, which was kept by the rector of the parish, a copy of which he had; and that when the lands were so distributed, every proprietor of lands in those meadows had the number of poles he was entitled to allotted to him for the ensuing year, sometimes in one part and at other times in other parts of the said meadows; that the said meadows had been immemorially divided into three parts, one part, called the *Deep Meadow*, containing one hundred and ninety-two poles; another, called *Middle Meadow*, containing one hundred and sixty poles; and the other, called *Buckford*, containing fifty-six poles; that twelve poles in one lot, and three poles in another, had been always allotted in *Deep Meadow* to the parson of the parish; that his lessee had always had half of all the grass cut and made into hay every year from ten poles lying in part of *Deep Meadow*, called the *Pewer*; and also from eleven poles more lying in another part of *Deep Meadow*, called *Drews*; and likewise from five poles more lying in another part of *Deep Meadow*, called *Elstowe*; and likewise from two poles more lying in another part of *Deep Meadow*, called *Burgoin*; and from another pole of land lying in

HUTTON  
against  
STEVENS.

in that part of said meadow called *Burgoine*; and from two poles more in another part of *Deep Meadow* called *George*; and that the parson or his lessee had taken the grafs of the same after the same had been cut and cocked; that the parson of the said parish had immemorially taken several allotments of cocks of hay from the said meadows, as in the answer mentioned; and that the parson had immemorially such allotments in the said meadows, and in such proportions of grafs and hay cut and made from and upon *Moreton Meadows*; and he insisted that no part of his said lands in *Moreton Meadows* were liable to the payment of tithes for the year 1761, except the said one pole so fed by his cattle; but he admitted that in case the same had been mowed, the plaintiffs would have been entitled to half the grafs or hay so cut or made after the same had been mowed and cocked as aforesaid. He further said, that the value of the hay arising from each acre of grafs cut by him in the said year in the meadows and titheable places thereof, amounted to twenty shillings an acre on an average; that the value of the tithe of the six acres of grafs made into hay by him in the said year, and which was taken in kind by the plaintiff *Greaves*, was one pound, one shilling, and sixpence; and that the said six acres were all the grafs land held by him in the said year for which any tithes were due to the plaintiffs. He denied that the said fourteen poles and a half were equal to between three and four statute acres of land, but believed that they were equal to two statute acres, and that the hay produced upon each of these poles was worth, one with another, about five shillings. He admitted that the fourteen poles and a half lay in *Moreton Meadows*, and that the residue of the said six acres mowed by him lay in the open fields, and denied that he knew that the eighteen poles set out for the parson in the said meadows were not set out for him in lieu of tithes, or that the same were set out as part of his glebe; but said that the glebe consisted of eighteen acres which the parson had in the open fields, exclusive of the meadows. He admitted the allotment of meadow ground as mentioned in the bill, but denied that he had fed and depastured the said one pole in order to prevent the plaintiff's having any tithe hay from the same.

The plaintiffs replied; the defendant rejoined; and witnesses were examined on both sides; and, upon hearing counsel, and reading the several proofs taken in the cause in defence of the custom; *The Meadow Book*; and on both parties respectively waiving any account of the tithes in question; the defendant agreeing to pay, and the plaintiff to accept, the sum of ten shillings and sixpence, in lieu and satisfaction of the tithes in kind in the three meadows demanded by the bill.

The

THE COURT ordered the defendant to pay the plaintiffs the said sum of ten shillings and sixpence, together with the costs of this suit to be taxed.

HUTTON  
against  
STEVENS.

KNOWLER against BUDD; et c. Contra.

EASTER TERM  
5. GEO. 3.

Northampton, 25th April 1765.

THE bill stated that the plaintiff was, in the year 1740, instituted and inducted into the rectory of *Upper Bodington*, in the county of *Northampton*, and thereby became entitled to all tithes, both great and small, within the said rectory; that the parish consisted of two distinct tithings, called *Upper Bodington* and *Lower Bodington*; that these were two distinct common fields until the twentieth of April 1759, when they were inclosed by act of parliament; that certain allotments of the said common fields were made by the said act to the plaintiff in lieu of his glebe lands, *modus* for milk, and his rectorial and small tithes; that until such divisions and allotments were finished, the rector was to receive and enjoy all the said tithes, in such manner as if the said act had not been made; that about April 1747, the plaintiff, by agreement in writing with the landholders of the parish, demised, granted, and to farm let all his tithes, both great and small, arising within the township and common fields of *Lower Bodington* (mortuaries, burial, marriage, and other surplice fees excepted), for twenty-one years from *Martinmas* 1746, the landholders of the said common fields paying the yearly rent of one pound seventeen shillings, by two equal payments, for and in consideration of each yard land they should hold during the said term; but that in case the said common fields were inclosed, the said articles were to be void; that the defendant *W. Budd*, by indorsement on the said articles, dated the twenty-seventh of *March* 1752, agreed thereto, he having entered on three yard lands of sheep commons at *Lady Day* 1751; that before the said inclosure the common fields consisted of forty-two yard lands and a half, and were divided into three parts, each alternately lying fallow, and the other two parts employed in tillage; that the use of the time for persons to become tenants of farms in *Lower Bodington* was on the twenty-fifth of *March*, old stile; that the tenant then entered on every part thereof, except that part which was employed in tillage, which belonged to the going off tenant, till he had cut and carried away all his corn; and that as by such means the tithe of corn and grain were not payable till the tenant had been a year and a half in possession, the tithe of the fallow was postponed also; that the defendants had held, occupied, and enjoyed divers farms and sheep commons in

on the arable when cleared; that the tenant never paid tithes till he had been a year and a half in possession; that the defendants had occupied lands in the common field from *Lady Day* 1758, to the twentieth April 1759;

The rector of *Bodington*, in *Northamptonshire*, claims the tithes of *Lower Bodington*, and states that the common fields were inclosed by act of parliament on the 20th April 1759;

that he had, in 1747, let the tithe of the said common fields to the defendants for twenty-one years; the agreement to be void if the inclosure were made;

that the said common fields were divided into three equal parts; that two parts thereof were alternately in every year tithed, and that the other lay fallow;

that the farmers entered on the fallow part of their farms at *Lady Day*, and

*Lower*



Knowles  
against  
Budd;  
et c. Contra.

and that he is  
entitled to tithes  
during that pe-  
riod.

The defendants  
say, that on the  
inclosures being  
made, the farm-  
ers took posses-  
sion of their res-  
pective portions  
of the common  
field before *Martinmas* 1758;

The defendant  
*Budd* says, he  
quitted the farm  
at *Candlemas*  
1758.

The defend-  
*Weston* admits  
that he succeeded  
*Budd*.

The other de-  
fendants say, they  
entered on the  
fallow farms  
at *Lady Day*;  
that they paid  
one half of their  
tithes at *Martin-  
mas*, and the o-  
ther half on the 2d  
of *February* following;

*Lower Bodington* for one year, viz. from *Lady Day* 1758, to the twentieth of *April* 1759; that *Smallbrook Meadow*, having lain fallow in the year 1758, they had in the year 1759 great quantities of hay from off the same; that they had also kept cows thereon which yielded calves; that they had flocks of sheep, from which they had wool and lambs; that they had sows, pigs, geese, ducks, hens, and other poultry, horses, mares, and colts, and had fed great numbers of dry and unprofitable cattle; and that they had refused to come to any account with the plaintiff for their tithes, or to make him any satisfaction in lieu thereof. The bill therefore prayed, that the defendants might account with him for the tithes of the fallows and the said common fallow meadows, from *Lady Day* 1758 to the twentieth of *April* 1759, and for all other tithes of their said farms, from *November* 1758 to the twentieth of *April*, and pay him what should be found due on such account.

The defendants admitted, that the plaintiff had been rector of *Bodington* ever since the year 1740, and was entitled to all the tithes, both great and small arising therein; that the parish, till the act of parliament passed for inclosing the common fields, was divided into *Upper Bodington* and *Lower Bodington*; that the several proprietors and parties interested in such inclosure, took possession of the several allotments made to them in pursuance thereof before *Martinmas* 1758; that the commissioners of the said act, about the twentieth of *April* 1759, made their award for inclosing and dividing the said common fields; and that the common fields of *Lower Bodington*, before they were inclosed, were divided into three parts, two of which were in tillage, and the third in fallow, alternately every year.

The defendant *Budd* admitted, that he had occupied three yard lands in *Lower Bodington* from *Lady Day* 1751 until the time of the inclosure, and also another farm, with three yard lands, some years before 1758; and he said, that he had quitted the field at *Candlemas* 1758, and the farm at the *Lady Day* following.

The defendant *Weston* admitted, that he took possession of the farm aforesaid when the defendant *Budd* quitted it; and that he had also rented another farm with three yard lands.

The other defendants set forth the farms and lands they held, and admitted, that they had entered on every part of their said farms at *Lady Day*, except that part employed in tillage; but they denied that the payment of fallow tithe was postponed for a year and a half, as stated in the bill, and insisted, that the usual course of paying tithes in the parish was to pay one half year's tithe at *Lanmas* or *Martinmas*, and the other half year on the second of *February* following; that if a

tenant

tenant entered on his farm at *Lady Day* 1757, the rate tithe payable for lambs became due on the third of *May*, and the tithe of wool on the day of shearing in that year; that the payment of tithes for each, as well as for fallow hay, were included, together with the corn and grain, in the usual payments made by the going off tenant at *Martinmas* 1757 and the *February* following, and to be accounted for to him in aid of such payment by the coming on tenant; that the fallow tithes for the year 1758 had, together with the tithes of corn and grain, been discharged in that year by the payments made at *Martinmas* 1758 and the *February* following; and that if any receipts had been given, they ought to have been given for all tithes, fallow as well as corn, which were then due. They further said, that the tithes had always been let from *Candlemas* to *Candlemas*, but that the payment of the said tithes were altered, and that they had been, from the year 1739, constantly paid at *Martinmas* and *Candlemas* following. They admitted that the plaintiff took the tithe of lambs in kind in the year 1744, and said, that it was customary to take the tithe of lambs of sheep depastured in the fields in the preceding winter in kind, and only a rate tithe for such as were brought in after *Candlemas*; that persons occupying lands in the *Open Fields* paid only a rate tithe of an halfpenny for each lamb yeaned after *Lady Day*, and for each sheep shorn the year after their entry; because the sheep, at the time of shearing, had been depastured in the field only from *Lady Day*, and that such rate tithe was not due to the plaintiff, but ought to go in aid of the last year's payment made by the going off tenant, who paid off all tithe, although his sheep were depastured in the field to *Lady Day* only, for that otherwise the plaintiff would receive a full tithe and a rate tithe also. They admitted the agreement made by the plaintiff with the landholders in *Lower Bodington* for twelve years, ending at *Martinmas* 1758; and, with regard to tithe hay, they insisted, that as there was no tithe hay of the fallow field or meadow, more than one year out of three, and as the titheable meadow, which was the largest and most fruitful, came not into fallow field till the third year after the plaintiff's demise, the renters of the tithes had not their equality of enjoyment completed till *Martinmas* 1758, at which time there had been exactly four complete rotations, and that therefore the tithe hay of the fallow meadow was to be accounted for by the then occupier to the going off tenant; for that if the plaintiff were permitted to have tithes of the fallows from *Lady Day* 1758, as claimed by the bill, together with the payment made at *Martinmas* 1758, they would, in such case, pay for one year's tithe of the said fallow more than they had occupied. They set forth an account of all the titheable matters and things they respectively had on their said lands, and the values of the tithes thereof; but insisted that the plaintiff had been fully paid in respect thereof

Known as  
against  
Budd;  
et al. Contra.

that the rate  
tithe for lambs  
were paid on  
the third of *May*;

that they had  
paid their tithes  
both for the a-  
rable and fallow  
lands to *Febru-  
ary* 1759;

that tithes are  
due from *Can-  
dlemas* to *Can-  
dlemas*, and paid  
at *Martinmas*  
and *Candlemas*;

that tithes in  
kind were pay-  
able for the win-  
ter flock of  
lambs, and a  
rate tithe for  
those brought in  
after *Candlemas*;

that the agree-  
ment ended at  
*Martinmas* 1758;

that the fallow  
only paid tithe  
one year out of  
three;

and that the  
plaintiff had re-  
ceived all his  
tithes.

KNOWLES  
against  
BUDD;  
et c. Contra.

during his incumbency; that if any tithe of the fallow field and meadow had been behind and unpaid, it was a deficiency commenced from time immemorial, and not during the plaintiff's time; and that they had paid to the plaintiff all the tithes that were due.

The defendants  
file a cross bill.

The defendants filed their *cross bill* for a satisfaction for their cross demands on the plaintiff, as insisted on by their answers to be overpaid, for ploughing and folding their sheep.

The rector an-  
swers it.

The rector appeared to the said cross bill, and denied that the defendants were entitled to such relief as prayed therein.

The evidence  
read.

The plaintiffs in both causes replied; the defendants rejoined; and witnesses were examined on the part of the plaintiff and the defendants in the original cause; and upon hearing counsel for all parties, and reading the agreement between the plaintiff *Knowles*, and several of the landholders in the parish of *Bodington*, dated *April 1747*; an indorsement thereon dated the twenty-third of *March 1748*, signed by the defendant *William Sears*; another, dated the twenty-seventh of *March 1752*, and signed by the defendant *Budd*; the proofs taken on behalf of the plaintiff in the original cause; and on debate of the matter;

Both bills dis-  
missed without  
costs.

THE COURT ordered both the *original bill* and the *cross bill* to be dismissed, but without costs on any side.

THE COURT FULL.

EASTER TERM,  
5. GEO. 3.

BROWN against ANNESLEY.

*Oxfordshire, 29th April 1765.*

The rector of  
*Bletchington*, in  
*Oxfordshire*,  
claims the great  
and small tithes  
of the *Three South-*  
*ies*, *Linco Coppice*,  
*Knowles Mead*,  
*Skein's Close*, the  
farm grounds  
called the *War-*  
*ren*, that part of  
the *Great Mead*  
called *Two Mill*  
*Meads*, another  
part of the *Great*  
*Mead* laid into  
*Durnford Mead*,  
*Chickwell Mea-*  
*dow*, the *Han*,  
and *Three Men's*  
*Moor*.

THE bill stated, that the plaintiff then was, and for eleven years past had been rector of *Bletchington* in the county of *Oxford*; that the said rectory, for all the time whereof the memory of man was not to the contrary, had been a parsonage presentative with cure of souls; that certain glebe lands, and all manner of tithes, both great and small, arising within the parish and the titheable places thereof, belonged to the rectory or parsonage; and that all the former rectors had and the plaintiff ought to have been paid tithes in kind for corn, grain, hay, dry cattle fed and depastured or agisted, calves, lambs, pigs, geese, wool, milk, eggs, underwood, furze, turnips, and the aftermath or second crop of clover arising in the said parish and the titheable places thereof, and particularly on the lands, grounds, and premises in the possession of the defendants; that the defendants, or some of them, had, for several years past, been owners or tenants of the several farms, lands, grounds, and premises in the parish and titheable places thereof,

viz.



viz. the defendants *Annesley, Young, Busby, and Walton*, of the three Southies, *Lince Coppice, Knowles Mead, Shein's Close, the Warren*, then divided into four grounds, *Two Mill Meads*, and part of the *Great Mead*: the defendants *Appletree, Tuckwell*, and *Annesley*, of part of *Great Mead* now laid to *Durnford Mead, Chickwell Meadow, the Ham*, a little meadow between *Chickwell Meadow* and the *Parsonage Meadow* called *Three Men's Mowth*; that the defendants, from the twenty-fifth of *March 1751*, had severally fed, depastured, and agisted, barren and unprofitable cattle on the said farms, lands, and premises, and had calved, yeaned, pigged, and hatched, a number of calves, lambs, pigs, and geese, and had arising thereon, corn, grain, hay, wool, milk, eggs, underwood, furze, turnips, and aftermath or second crop of clover; that all the tithes thereof were yearly worth forty pounds, and ought yearly to have been justly set out and paid, or some satisfaction made in lieu thereof to the plaintiff as rector; but that the defendants had refused to set out, satisfy, or pay the same, or to make any composition in lieu thereof: and he set forth, that, by a decree made in this court in *Easter Term*, in the fifteenth year of *Charles the First*, in a cause then depending between the then incumbent of the said rectory or parsonage, and the owners, tenants, and occupiers of the said lands and premises, and particularly of *Shein's Close, Chickwell Meadow, the Ham*, and the little meadow or *Three Men's Mowth*, adjoining to *Chickwell Meadow*, and the premises aforesaid, tithes in kind for all the said titheable matters had been decreed to the said then incumbent in right of the said rectory (a); that by another decree, dated the eighteenth day of *February 1761*, made in a cause wherein the present plaintiff and *J. Bailey* his lessee were plaintiffs, and the defendant *Annesley* and others were defendants, the said defendants were ordered to satisfy to the plaintiff for the value of the tithes arising in *Chickwell Meadow* and *Three Men's Mowth*, during the time demanded by the bill from *Lady Day 1753* to *Lady Day 1756* (b). The bill therefore prayed, that the defendants might be decreed to come to an account with the plaintiff, and satisfy and pay him all and every the tithes subtracted by them or either of them, or the just value thereof, and that they might be compelled to set out, pay, or satisfy the plaintiff the full value of all the tithes that were then due or that should for the future accrue from or upon the said several lands so held by them.

The defendant *Annesley* admitted, that the plaintiff had been for twelve years past rector of the parish, but said, that he did not believe that all tithes, both great and small, therein

BROWN  
against  
ANNESLEY.

(a) Easter term, 15. Car. 1. Potter v. Coghill.

(b) See *Brown v. Buller*, ante, p. 1.

**Brown**  
against  
**ANNESLEY.**

The defendant says that *Knowles Mead* and *Shein's Close* are parcel of a farm called *Stutfold*, and that there is a *modus* of eight shillings a year, payable at *Michaelmas*, in lieu of the tithes thereof; that *Dry Close*, *Bridge-way*, and *Millfield*, are parcel of the *Warren*; that a *modus* of five shillings a year is payable for *Dry Close* and *Bridge-way*, and three shillings and fourpence a year for *Millfield*; that there is a *modus* of thirteen shillings and fourpence a year for the *Two Mill Meads*, and that the *Three Southies*, *Lince Coppice*, the two parts of the *Great Mead*, *Chickwell Meadow*, the *Ham*, and *Three Men's Mouth*, are tithe free;

arising, had at all times belonged to the said rectory, or, particularly, that the plaintiff, as rector thereof, was entitled to tithe in kind of all or any the particular titheable matters in the bill mentioned, which had arisen from the farms and lands called *Knowles Mead*, *Shein's Close*, the *Warren*, and the *Mill Meads*. He admitted, that he had been occupier of the coppice ground called the *Lince*, and of part of the lands called *Southies*, planted with underwood; and he set forth an account at what times the said coppice and underwood had been severally felled and cut down during the time he had occupied the same. He also admitted, that he was owner of all the farms and lands mentioned in the bill, and said, that he believed that a certain ancient invariable yearly sum of eight shillings, had for time immemorial been paid by the owners of the lands called *Stutfields*, otherwise *Stutfolds*, or their tenants, at *Michaelmas* or soon after, to the rector of said parish, in lieu and satisfaction of all manner of tithes yearly arising or renewing on the said lands; and he averred that *Knowles Mead* and *Shein's Close* were part of *Stutfield*, otherwise *Stutfold's* lands. He also said, that he believed that a *modus* of five shillings had been paid yearly for *Dry Close* and *Bridge Leaze*, and three shillings and fourpence for *Millfield* as aforesaid; and averred that *Dry Close*, *Bridge-way*, and *Millfield* were the same lands as were now called the *Warren*. He said, that he also believed that another immemorial sum of thirteen shillings and fourpence yearly, had been paid for the *Two Mill Meads* as aforesaid. And he further said, that all the aforesaid yearly sums had been accepted as *moduses* or ancient yearly payments, in lieu or satisfaction of all the tithes arising on the above-mentioned lands, until the time of the death of the last incumbent on the said rectory; that he, being owner thereof, had paid to the plaintiff for several years, to *Michaelmas* 1762, the said yearly sums; and that no tithe in kind, or other satisfaction in money, had ever been rendered or paid to the rector of the said parish for any titheable matters arising on the residue of the farm and lands called the *Three Southies*, *Lince Coppice*, part of *Great Mead*, other part of *Great Mead*, now laid to *Darnford Mead*, *Chickwell Meadow*, the *Ham*, and *Three Mens Mouth*, except that the plaintiff had been paid the tithes of *Chickwell Meadow* and *Three Men's Mouth*, from *Lady Day* 1753 to *Lady Day* 1756, pursuant to a decree of this court. He also said, that the said residue of the lands lie near the river *Charwell*, and were all meadow ground except the *Lince* and the *Southies*, which were both planted with underwood; that the said meadows were, beyond the memory of man, common or lot meadows, wherein several persons had parts or shares, and particularly the rector of the parish; that during the time the said common or lot meadows were in the hands of the lord of the manor, and since, no tithes had ever been paid for any

of

of them (except for the three years as aforesaid): and he insisted, that the rector had very sufficient recompence for the tithes from the said meadows, and that the said lands were free and exempt from the payment of tithes. He admitted the former suit, but said, that since he had put in his answer thereto he had found that *Chickwell Meadow* and *Three Men's Mouth* were not part of the lands to which such real composition extended. He also admitted, that the said common or lot meadows were inclosed; had come into the hands of the lord of the manor long before the inclosure; and were not any part of the lands inclosed, as mentioned at that time in his former answer. He also admitted, that the said bill, filed by *Potter v. Coghill*, was for a subtraction of tithes arising on the several parcels of land for which the plaintiff claimed tithes by his present bill; and that it was then decreed, that the plaintiff should have possession of the tithes in kind of all particular lands in question, until the defendant should evict him by a trial at law; but he said that he had afterwards appealed to the lord commissioners of appeals to have the said decree reversed; that thereupon their lordships ordered the barons of this honourable court to certify whether any depositions had been read at the hearing of the said cause, and that if there had not, that then their lordships did think fit that the petitioner *Coghill* should have possession till the party grieved should sue and a trial be had; that the barons did certify that no proofs had been read at the hearing of this cause; but that no further proceedings were had upon the said appeal. The defendant set forth several receipts for the *modus*es aforesaid, and offered to pay the plaintiff one tenth part of the yearly rent of such part of the lands in question, if the plaintiff should be entitled to tithes in kind provided the other defendants could not give an account thereof.

BROWN  
against  
ANNESLEY.

and offers a tenth of the yearly value if they are adjudged titheable.

The other defendants admitted that they were tenants to *Annesley*, and they put in the like answers as to their lands, and said that they had never paid tithe in kind, or any *modus* or composition for the same; that they were let to them tithe free; and therefore they were not able to set forth any account of their titheable matters and things, but that in case the plaintiff should be entitled to tithes in kind, were willing to make him a reasonable satisfaction for the same.

The several tenants of the said lands put in the like answers.

The plaintiff replied; the defendants rejoined; and witnesses were only examined on behalf of the defendants; and upon hearing counsel for several days, and reading a receipt signed *P. Brown*, dated the twenty-ninth of *March* 1763; several of the depositions taken in the cause of *Potter v. Coghill*; the decree made on the hearing, dated the second of *May* 1639; an order of the right honourable the lords commissioners for petitions, dated the seventeenth of *June* 1641; a certificate from the lord chief baron and the rest of

The evidence read.



BROWN  
against  
ANNESLEY.

The rector admits the *modus* of eight shillings, five shillings, and three shillings and fourpence had been received.

barons of this court to the lords commissioners, dated the second of November 1641; several depositions taken in this cause; the deposition of *W. Annison*, taken in the former cause of *Brown v. Annesley*; an indenture, dated the twenty-second of April, in the twenty-first year of *James the First*, signed by *G. Burhead*, then rector of *Bletchington*, *John Poor*, and others, tenants of lands in the said parish, whereby a general inclosure was made of the waste lands, open lands, commons, &c. in the said parish, and allotments thereof made to the rector of the said parish and lord of the manor and tenants respectively; and the plaintiff's counsel admitting that the three aforesaid *modus* of eight shillings and fivepence, and three shillings and fourpence, had been paid in lieu of all tithes for the several lands, &c. in the answer of *Annesley* mentioned, viz. *Stutfields*, otherwise *Stutfolds*, *Dry Close*, *Bridge Leaze*, and *Millfield*; and on full debate thereon had;

Issues directed to try whether

THE COURT ordered a trial at law on the two following issues:

*Knowles Mead* and *Sbein's Close* are part of *Stutfields*,

"FIRST, Whether the lands called *Knowles Mead* and *Sbein's Close* were any part of the lands heretofore called *Stutfields*, otherwise *Stutfolds*."

or the *Dry Close*, *Bridge Leaze*, and *Millfield*, part of the *Warren*.

"SECONDLY, Whether the ground now called *the Warren*, or any part thereof, was heretofore known by the names of *Dry Close*, *Bridge Leaze*, and *Millfield*."

The bill dismissed by consent as to the tithes of the *Two Mill Meads*, for which the *modus* of thirteen shillings and fourpence is set up.

THE COURT further ordered, that so much of the bill as demanded the payment of tithes in kind for the several pieces of ground called the *Two Mill Meads*, and for which lands the defendants, by their answers, insisted on a *modus* of thirteen shillings and fourpence, payable in lieu of the tithes of all the matters and things arising or renewing on the said two pieces of ground called the *Two Mill Meads*, be dismissed by consent without costs.

The defendants ordered to account for the tithes of the *Three Southies*, *Lince Coppice*, the two parts of *Great Mead*, *Chickwell Meadow*, the *Ham*, and *Three Men's Mowth*, with costs.

THE COURT further ordered the defendants to severally and respectively account with the plaintiff before the deputy remembrancer for the tithes of the several titheable matters and things which had arisen, renewed, or increased on the several lands in the said parish of *Bletchington*, called the *Southies*, the *Lince*, part of *Great Mead*, other part of *Great Mead* now laid to *Durnford Mead*, *Chickwell Meadow*, the *Ham*, and *Three Men's Mowth*, in the several occupations of the defendants during the time they the said defendants had been in possession thereof: the defendants to pay the plaintiff his costs of suit touching the matters for which they are severally to account.

PYLE *against* CLARK.EASTER TERM  
5 GEO 3.*Devonshire, 2d May 1765.*

THE plaintiff, on behalf of himself and all other the parishioners, occupiers of land, and inhabitants of the parish of *Rochbear*, in the county of *Devon*, stated, that the plaintiff occupied a messuage, tenement, and lands called *Upcott*, and several other lands in the parish; that the defendant *Sainthill* was impropriatrix of the rectory; that the defendant *Clark* was vicar thereof; that from time immemorial a custom had been used in the said parish that every householder within the same should pay to the vicar one penny as a *modus* for the tithe of all wood burnt in his house and cut down for firing in his family, called *the hearth penny*; one penny as a *modus* for the tithes of his garden, called *the garden penny*; twopence as a *modus* for the *Easter offerings* for every unmarried man, making in the whole fourpence; that the said sum had been immemorially paid by each householder in the parish, in lieu of the tithes aforesaid; that the said sum was payable by the plaintiff, he being an unmarried man, to the defendant *Clark* as vicar; that all other tithes, in respect of the farms he occupied, were payable in kind, or some composition in lieu thereof; that accordingly he had for several years past paid to *Clark* certain composition in lieu of small tithes and of the tithes of hay, to *Lady Day* 1762, and had paid into the consistorial court of *Exeter*, in consequence of a libel exhibited against him by *Clark*, the said composition to *Michaelmas* 1762, and had tendered the said composition due at *Lady Day* 1763; that he had set out for the defendant *Sainthill* or her lessees, the great tithes of all the corn and grain which he had in the parish; and that having paid such tithes in kind to the impropriatrix, and such compositions, including the said *modus* to the vicar, he had duly satisfied all his tithes, both great and small, to the time of filing his bill; but that the defendant *Clark* had exhibited a libel in the court christian against him before *James Carrington*, vicar general and principal official of the episcopal consistorial court of *Exeter* for non-payment of tithes for thirteen years past, thereby demanding the tithes of wheat, barley, rye, oats, beans, pease, hay, clover, grass, clover seed, coppice wood, underwood, gardens, milk, herbage, pasture, herbs, fruits, flowers, wool, lambs, colts, pigs, *Easter offerings*, and flax, and claiming them in kind, as having arisen upon his said farms, on a pretence that, as the said composition for small tithes and hay did not extend to corn and grain, he was entitled to recover against him the tithes thereof; but that as he had set out and paid the tithes of all his corn and grain for the said years to *Sainthill* or her lessees, and as by reason of such

The plaintiff, as a landholder in the parish of *Rochbear*, in *Devonshire*, files his bill against the impropriatrix, and the vicar, stating,

that there is one penny a year payable in lieu of the tithes of fire wood; one penny in lieu of garden stuff; and twopence in lieu of *Easter offerings*;

that the tithes of all other articles are payable in kind;

that he had compounded with the vicar for the tithes of hay and small tithes, and paid the same to *Lady Day* 1763;

that he had paid all his great tithes in kind;

that the said composition included the *moduses*;

that, notwithstanding, the vicar had libelled him in the spiritual court for the great tithes, for *Easter offerings*, the tithes of flax, and other tithes; and that he was ready to pay his future tithes to those to whom they might legally belong;

**Prayer  
against  
Clark.**

and prays that  
the vicar and  
impropriatrix  
may be ordered  
to interplead;

the *modus* estab-  
lished;

and the vicar re-  
strained from  
proceeding in  
the spiritual  
court.

The vicar ad-  
mits the *modus*  
of the *beast pen-  
ny* and the *garden  
penny*;

insists on two-  
pence for every  
person in the  
plaintiff's family  
as *Easter* offer-  
ings;

and five shil-  
lings an acre in  
lieu of the tithes  
of flax;

says that he li-  
belled the plain-  
tiff in the spiri-  
tual court;

for that the composition did not include the *modus* for *fire wood*, *garden stuff*, or *Easter* of-  
ferings, or the tithes of flax; and that he had only received the composition to *Michaelmas* 1762,  
and had tendered it to *Lady Day* 1763.

claim made by the vicar, he was at a loss to whom he ought to pay his tithes of corn and grain for the future until the rights of the said impropriatrix and of the said vicar were settled, and was ready and willing to pay the same to such party as should be entitled thereto, HE PRAYED that the defendants might respectively set forth what species of tithes they respectively claimed within the said parish and their right thereto; that they might *interplead* together touching the right which they respectively set up to the tithes of wheat, barley, rye, oats, beans, and pease, or any other species of tithes which they respectively claimed; that, in case it should appear that the defendant *Clark* was entitled to any of the tithes which he the plaintiff had paid to or for the use of *Sainthill*, he might account with *Clark* for the same, and pay the value of such tithes to him; that the said custom might be established, and the defendant *Clark* be decreed to receive from the plaintiff for the future one penny as a *modus* in lieu of the plaintiff's tithe of wood burnt in his house and cut for firing for his family; one penny as a *modus* for the tithe of his garden; and twopence as a *modus* for *Easter offerings*, for every unmarried man in his family, and in full thereof; and that *Clark* might be restrained by injunction from any further proceedings upon his said libel, in the court christian, touching any of the matters aforesaid.

The defendant *Clark* admitted, that the plaintiff held the farm and lands as stated in the bill; that the defendant *J. Sainthill* was impropriatrix of the rectory; that he was vicar thereof; and said, that as such he was entitled to all vicarial tithes arising therein; and that the *modus*, as mentioned in the bill, had been paid to him by the plaintiff in lieu of the several matters aforesaid; but he denied that twopence were payable as a *modus* for *Easter offerings* for each householder and all the communicants in his family, and insisted that fourpence were due at *Easter* yearly for every married man and his wife, and twopence a-piece for every communicant, in lieu of their general oblations; that all other tithes of the land occupied by the plaintiff in the parish were payable in kind, except the tithes of hemp and flax, for which he apprehended he was entitled to five shillings an acre. He admitted that he had for several years past taken a composition in lieu of the plaintiff's small tithes and tithes of hay to *Lady Day* 1762, but insisted that such composition did not extend to the five shillings an acre for the tithes of flax; and he denied that he had ever agreed to accept such composition since *Lady Day* 1762; but said that, on the contrary, he had sued out a citation from the consistorial court of *Exeter* against the plaintiff in a cause of subtraction of tithes;

that



that he had appeared thereto, and tendered, by leaving with the register there, one pound, eight shillings, and threepence for half a year's tithe of his said lands due at *Michaelmas* 1762, but that he had rejected the said tender, and exhibited the libel as stated in the bill for the recovery of his said tithes. He denied that he knew that the plaintiff had set out to the defendant *Saintbill*, or her lessees, all his tithes of corn or grain. He further said, that the plaintiff, by paying such composition to him as aforesaid, had not duly satisfied all his small tithes to the time of filing his bill, and that the said composition did not include the *modus*es for wood, gardens, and *Easter* offerings; and he submitted that his suit in the ecclesiastical court was not unnecessary; that he had a right to tithes in kind; that he was not obliged to accept a composition in lieu thereof; that he had also a right to five shillings an acre for the tithe of flax; but that he disclaimed all right to the tithes of wheat, barley, rye, oats, beans, and pease, though demanded by the libel. He also insisted that he had a right to the tithes of apples, nurseries, hay, clover grass, clover seed, coppice wood, underwood, gardens, milk, herbage, pasture, herbs, roots, flowers, wool, lamb, colts, pigs, *Easter* offerings, hemp, and flax; and said, that he was ready to accept the said composition, in lieu of tithes, to *Lady Day* 1762, save as to the said five shillings an acre for flax, which was not included therein. He declared that he had never insisted on the tithe of wood for firing, or of garden stuff in kind, or that he had denied such customs as the *hearth penny* and the *garden penny*.

FILE  
against  
CLARK.

that he was willing to receive the said tender, except as to the tithe of flax.

The defendant *Saintbill* was not served with *subpœna*, and therefore did not answer.

The plaintiff replied; the defendant rejoined; but no witnesses were examined on either side; and upon hearing counsel and reading the libel exhibited in the spiritual court and the schedule thereto, as set forth in the defendant's answer;

The cause heard.

THE COURT ordered the *modus* of one penny, in lieu of the tithe of all wood burnt by the plaintiff in his house, and cut down for firing in his family, called the *hearth penny*; and the *modus* of one penny in lieu of tithes of the plaintiff's garden, called the *garden penny*, to be established during the time the plaintiff should continue in possession of the farm, and the defendant *Clark* should continue vicar of *Rockbear*; but that the same be done at the expence of the plaintiff, the defendant not disputing the said *modus*es, but having admitted them to be payable by his libel exhibited, against the plaintiff in the spiritual court.

The *hearth penny* and the *garden penny* established at the expence of the plaintiff.

THE COURT further ordered the injunction to be dissolved.

The injunction dissolved.  
THE

**PYLE**  
*against*  
**CLARK,**  
 The bill, as to  
 other matters, dismissed with costs.

THE COURT further ordered, that as to all other matters the bill be dismissed, with costs to be taxed for the defendant *Clark* by the deputy remembrancer of this court.

TRIN. TERM,  
 5. GEO. 3.

**LLWYD against BROWN.**

*Middlesex, 7th June 1765.*

The rector of *Hornsey*, in *Middlesex*, is only entitled to 4d. an acre from the occupiers of lands therein as a *modus* in lieu of all tithes both great and small, the agistment of cattle, cows, and all other rectorial demands whatsoever arising therein.

THE bill stated, that the plaintiff was, in the year 1758, lawfully instituted and inducted into the rectory and parish church of *Hornsey*, in the county of *Middlesex*; that by means thereof, he was entitled to all great and small tithes yearly arising in the said parish, and the titheable places thereof, or to some satisfaction in lieu thereof; that he, not intending to interrupt the ancient established practice of the said parish, claimed as small tithes for every tenth lamb after the first seven, five shillings, *viz.* one in the first seven that should fall, and the next out of every next ten following; for every tenth goose after the first seven, if not taken in kind, which was in the choice of the minister, the sum of one shilling; for every tenth pig after the first seven, two shillings and sixpence; for every cow, at *Easter*, fourpence; and for every person above the age of sixteen years, at *Easter*, threepence; that the said tithes had been constantly paid to his predecessors; that the defendants had been inhabitants and occupiers of lands within the said parish for several years past; that during such time they had respectively had therein, or in the titheable places thereof, divers lambs, geese, pigs, cows, and persons in their respective families above the age of sixteen years; for which they had refused to pay or account with him. The bill therefore prayed, that the defendants might be decreed to account with the plaintiff for the titheable matters and things aforesaid.

The defendants said, that the plaintiff, they believed, was rector of *Hornsey*; but they denied, that he was entitled to receive such small tithes for lambs, geese, pigs, cows, and persons above the age of sixteen years in their families. They admitted, that they had been several years inhabitants and occupiers of lands within the said parish, and had during that time several lambs, geese, pigs, cows, and divers persons above the age of sixteen years in their families; but they insisted, that all occupiers of lands in the said parish had, from time immemorial, only paid to the rector a *modus* of fourpence an acre for all the lands held by them therein, in lieu of all tithes both great and small, the agistment of cattle, cows, and all other demands whatsoever, for or on account of tithes to the said rector, save only that the inhabitants

inhabitants had usually, at *Easter*, given some small sum to the rector (which they apprehended might be by way of *Easter offerings*), being generally two shillings and sixpence; and that the said sum amounted to more than threepence a piece as aforesaid.

LLWYD  
against  
BROWN.

The defendant *Brown* said, that he had resided and occupied a farm in the parish twenty-four years; that about fourteen years ago he began to suckle house lambs; that he paid the plaintiff's predecessors for seven years seven shillings and sixpence a-year, and for the last five years ten shillings and sixpence a-year, for the tithes of such suckled lambs, and also had paid one shilling at *Easter* yearly; but that on being informed that none of the other occupiers of land did the like, he had discontinued such payment for the tithes of suckled lambs. He denied, that such tithes as were claimed by the bill were after the ancient and established rule of the parish, or that they had ever paid the plaintiff's predecessors after that rate, or made any other payments on account of tithes to them than as aforesaid. He said, that the plaintiff, as rector, had *glebe lands* to the value of one hundred pounds a-year; that he was excused from the payment of poor's rates; and that those benefits added to the *modus* of fourpence an acre and the gift or offering from the occupiers of lands, made his income more than two hundred pounds a year; and that it was, in the apprehension of the parish, a full recompence for all tithes arising in the said parish.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel; and reading several proofs taken in the cause; and a receipt, signed *T. Cartwright*, dated the thirteenth of *October* 1747;

THE COURT ordered a trial at law on the following issue,  
 "Whether there be a custom within the parish of *Hornsey*,  
 "observed for time beyond the memory of man, that all and  
 "every occupier and occupiers of lands therein have paid,  
 "or ought to pay, to the rector of the said parish, a *modus*  
 "of fourpence an acre for all the lands held by them  
 "in the parish, for, and in lieu, and in satisfaction of all tithes  
 "both great and small, the agistment of cattle, cows, and all  
 "other demands whatsoever for, and in lieu, or on account of  
 "tithes, to the said rector, except *Easter offerings*."

The issue was accordingly tried by a special jury before THE LORD CHIEF BARON, and a verdict given for the defendants.

THE



LAWYD  
against  
BACWY.

THE COURT, upon reading the decree and *posse*, and hearing counsel for both parties, ordered, on the twelfth of June 1766, the bill to be dismissed, but without costs.

T. PARKER.  
S. S. SMYTHE.  
RICH. ADAMS.

TRIN. TERM,  
5 GEO. 3.

CHURCHILL *against* CABELL; *et à Contra.*

Dorsetshire, 3d July 1765.

The plaintiff, as rector of Cattistock, in Dorsetshire, and as lessee, by parol agreement of the rector, of the tithes of Froom Vanchurch, in the said county, claims the tithes of Chentinarle Farm, in the parish of Froom Vanchurch, from Lady Day 1760 to Lady Day 1761.

THE bill stated, that the plaintiff Churchill had, about three years before, been presented to, instituted, and inducted into the rectory of the parish of Cattistock, in the county of Dorset; and that he was thereby entitled to all tithes within the parish and the titheable places thereof, or to some satisfaction for the same; that the plaintiff Hayne had, eight years before, been presented to the rectory of Froom Vanchurch; and that he, his tenant, or proctor, was thereby entitled to all tithes arising therein; that on the fifth of May 1760, the said Hayne entered into the following agreement with Churchill, TO WIT, "The fifth of May 1760, I give the Reverend Mr. William Churchill full power to compound for that part of the tithes of Chentinarle Farm which lies in the parish of Froom Vanchurch, or to take it in kind, as shall be most suitable to him. JOHN HAYNE, Rector of Froom Vanchurch;" and that such parol agreement further was, that he was to give him five pounds for those tithes at all events, or more if he should make more of them; that the defendant, an inhabitant of Cattistock, did, from Lady Day 1760 to Lady Day 1761, occupy the said farm, which lies partly in Cattistock and partly in Froom Vanchurch, of the yearly value of two hundred and fifty pounds, consisting of arable, meadow, and pasture ground; that the plaintiff Churchill, as rector of Cattistock, was entitled to the tithes arising on such part of the said lands as lie therein, and also, by the said agreement, to the tithes of such parts as lie in the parish of Froom Vanchurch; that the defendant had, from Lady Day 1760 to Lady Day 1761, sowed several acres of arable land, from which he had wheat, barley, and oats, the tithes of which were of great value; that he had mowed several acres of grass from the meadow grounds, from which he had collected several loads of hay; that the tithes of the said corn and part of the said hay were set out and paid to the plaintiff Churchill; that the defendant, before and after Lady Day 1760, kept on the said farm many sheep; that some short time before Lady Day 1760, there were yearned by the said sheep thereon several lambs; that the tithe of the wool of the said sheep at the time of shearing them at Midsummer 1760, and the tithe of the said lambs at the time of weaning them about May 1760, would

have been of great value had the sheep been shorn and the lambs been weaned in either of the said parishes, and not fraudulently removed from thence; that the defendant, during the remainder of the said year, kept on the pasture grounds of his farm not only part of his flock of sheep which had been so removed, but had kept thereon another flock of sheep, without paying *Churchill* any tithes for the same; that he had also kept on his said lands various lean and barren cattle, milch cows, heifers, bulls, mares, and colts, the tithes of the depasturage of which lean and barren cattle, mares, and colts, and of the milk and calves of the said milch cows and heifers, were also of great value; that he had also on the said farm geese, hens, apples, and other small titheable matters; that the plaintiffs had severally applied to him to come to an account with *Churchill* for the said tithes; but that he had refused, under various pretences, so to do. The bill therefore prayed, that the defendant might account for the several titheable matters aforesaid, and pay *Churchill* for the same.

*Churchill*  
against  
*Cabell*;  
at d. Contra.

The defendant admitted, that the plaintiffs were duly presented into the said parishes, as in the bill is mentioned, and entitled to the tithes, or to some payment in lieu thereof; and said, that he had heard of such agreement touching the tithes, but that no notice had been given to him thereof until *August 1761*; that he then received notice from *Hayne* to pay *Churchill*; that he immediately waited on *Churchill*, and paid him five pounds, being the money which *Hayne* had agreed to accept yearly from him in lieu of his tithes arising in *Froom Vanchurch*; that *Churchill* gave him a receipt for the same as follows: "The  
" twenty-fourth of *August 1761* received of *Mr. Cabell*, for the  
" use of the *Reverend Mr. Hayne*, the sum of five pounds,  
" in full for one year's tithes of that part of *Chentinarle Farm*,  
" lying in the parish of *Froom Vanchurch*, ended *Lady Day 1760*,  
" by *WILLIAM CHURCHILL*." He admitted, that from *Lady Day 1760* to *Lady Day 1761* he was an inhabitant in *Cattislock*, and had during that time occupied the said farm, consisting of meadow, pasture, and arable land, of the yearly value of two hundred and fifty pounds; and that the plaintiffs, as rectors of the said parishes, were entitled to all the tithes thereof, save the tithes of milk and calves, in kind. He also admitted, that from *Lady Day 1760* to *Lady Day 1761*, he had sowed several acres of arable land on the said farm with wheat, barley, and oats, which produced several loads of threshed corn; and he averred, that he had set out the tithes thereof, and paid the same in kind to the plaintiff. He said, that in the said year he had mowed several acres of meadow grass, which he had made into hay, the tithe of which he had also set out and paid to *Churchill*, except some small part thereof, about which there was a difference. He also said that before and after *Lady Day 1760* he

The defendant says, that he had entered into a composition for the tithes of the said farm, and had paid the same until *Lady Day 1760*;

that the said farm was of the yearly value of 250*l.*; and that he had several titheable matters and things thereon between *Lady Day 1760* and *Lady Day 1761*.

had

CHURCHILL  
against  
CABELL;  
et c. Contra.

that he received  
no notice what-  
ever of the  
plaintiff's in-  
tention to take  
his tithes in  
kind, or to va-  
cate the former  
agreement, until  
6th May 1769;

had kept on *Chentinarle Farm* several sheep; that some short time before *Lady Day* 1760 there were yeaned by the said sheep on the said farm several lambs; and that the tithe of the wool of the said sheep about *Midsummer* 1760, and the tithe of the lambs at weaning them about *May* 1760, would have been worth to the plaintiff eight pounds, had they been shorn and lambed either in the parish of *Cattislock* or in the parish of *Froom Vanchurch*; but he denied, that he had fraudulently removed them out of the said parishes. He also said, that in the said year he had kept on the said farm several lean and unprofitable cattle, to wit, heifers and steers bred for the use of his plough and dairy, and had also milch cows, heifers, bulls, and colts; and that the tithes of the said barren cattle, viz. the mares and colts, were worth three shillings and eightpence. He said also, that he had kept on the said farm geese and hens, and had gathered a few apples; but he denied, that he had any other titheable matters in the said parishes in that year, or that he did, to elude the payment of tithe wool in kind, or to deprive the plaintiff thereof, at or soon after *Lady Day* 1760, remove his flock of sheep and lambs, or any part thereof, out of the said parishes into the parish of *Melbury Osmond*, or into any other parish, or that he had ever pretended that he had paid the tithes of such lambs, wool, lean and barren cattle to the rectors of such other parishes; but he said, that he had been for many years a common buyer and seller of sheep in principal fairs and markets for profit; and that for the advantage of his lambs for sale, he had always used to lay up some meadow ground from before *Michaelmas* yearly for his ewes and lambs to feed on; and that some short time before *Lady Day* 1760 he sent part of them from *Chentinarle Farm* to *Evershot* into some meadow ground that he rented there; that they were not so removed with any view to defraud the plaintiff; that he had sent other part of such ewes and lambs to *Melbury Osmond*, and another part to an estate of his own at *Yeovil*; that the said flocks were severally depastured on the said several lands till they were by him sold; that his only reason for removing such sheep was, that his said ewes and lambs should improve as much as possible for sale, for that *Chentinarle Farm* was not sufficient to carry the whole stock of which he was owner. He declared, that he had not received any notice from *Churchill* of his intention to tithe such lambs in kind, or to vacate the former agreement made with him for his tithes, until the sixth of *May* 1760; and that, on the sixth of *May* 1760, *Churchill* sent him the following letter:

“MR. CABELL, I have *Mr. Haynes'* order this week to receive  
“the five pounds for one year's tithes of that part of  
“*Chentinarle Farm* lying in *Froom Vanchurch*. My servant  
“will give you a receipt for it. I should be glad to know what  
“you intend to do about the tithes for this year; whether  
“you are willing to compound as others have done, or set them  
“forth



"forth in kind. You have your choice to do which you please; but I ought to know before night, as lambs are generally tithed this day. I am, &c. WILLIAM CHURCHILL. "The sixth of May 1760." He denied, that he had sheared in the said year from the said ewes and lambs any wool; but said, that he had sold all that were on the said farm unsheared; that on his estate at *Evershot* he had sheared some of the ewes and wethers which he had bought after *Lady Day* 1765 to depasture thereon; that the said ewes and lambs were taken from the sheep so sold as aforesaid; and that the sheep last bought were depastured partly on his own estate at *Evershot*, and partly on *Chentinarle Farm*; but that neither the same, nor any other sheep, were shorn by him in the year 1760 on *Chentinarle Farm*. He denied, that he had paid the tithes of such sheep, wool, and lambs, and lean and barren cattle, to the rectors of any adjacent parish; but he said, that he had for many years agreed with and paid to the rector of *Yeovil* a yearly sum for all tithes of his estate there; and that the lessors of the other estates which he rented at *Evershot* and *Melbury* had agreed with the rectors thereof for the same. He denied that he had refused to pay the plaintiff the tithes of depasturing such sheep, or the tithe of his hay, or any other tithe; but that, on the contrary, he had several times offered the same. He further insisted, "that there was, and time out of mind had been, a *modus* of one shilling and twopence paid and payable by the occupiers of lands within the out-tithing of *Cattisflock*, to the rector thereof for the time being, for the tithe milk of every milch and dairy cow and heifer, and their calves yearly fed and calved within the said out-tithing;" and he averred, that *Chentinarle Farm* lay in the said out-tithing. He also averred, that as to the tithes of feeding his sheep and cattle he had tendered *Churchill* seven pounds, three shillings, and one halfpenny for the same; and he insisted, that it was all that was due to him; and that he had refused to accept it, alledging, that nothing was tendered for wool and lambs, and only one shilling an acre for the tithe of hay which was under the value thereof, and nothing for the tithe milk and calves. He further said, that he had sheared his sheep in *Evershot*; and that after such shearing, they were removed from thence to *Chentinarle Farm*; and that the value of the tithe of the wool was two pounds, fourteen shillings.

CHURCHILL  
against  
CARELL;  
et à Contra.

that there is a  
*modus* of 1s. 2d.  
payable by oc-  
cupiers in the  
out-tithing of  
*Cattisflock* to the  
rector, in lieu of  
the tithes of  
milk, cows, and  
calves.

The defendant filed a cross bill, stating, that he occupied *Chentinarle Farm*; and insisting on the *modus* of one shilling and twopence for tithe milk and calves;

The defendant  
files a cross bill  
to establish the  
*modus*.

The rector denied the *modus*, and insisted on the tithe of milk and calves in kind.

The rector de-  
nies the *modus*.

The plaintiffs in both causes replied; the defendants rejoined; and witnesses were examined for all parties in both causes; and

The cause  
heard.

upon

CHURCHILL  
against  
CABELL;  
at 2 Conts.

The defendant  
ordered to ac-  
count for all  
tithes, except  
milk and calves.

upon hearing counsel; and reading the several proofs taken in the causes; and upon full debate of the matter;

THE COURT ordered Cabell to account with Churchill for his tithes of the wool shorn and lambs fallen from his sheep removed from Chentinarle Farm from and after Lady Day 1760; and for all the other titheable matters arising on Chentinarle Farm, in Cattistock and Froom Vanchurch, during the time demanded by the said bill, except the tithe of milk and calves which had arisen on that part of Chentinarle Farm lying in Cattistock, called the Out-Tithing, for which Cabell set up a *modus* of one shilling and twopence a-year for a milch cow and heifer and their calves fed and calved within the said out-tithing of that part of Chentinarle Farm as lies in the parish of Cattistock; the defendant to pay Churchill his costs of this suit up to this time for all the titheable matters demanded by the said bill, except milk and calves; the consideration of such titheable matters covered by the said *modus* and subsequent costs to be reserved.

Leave given to  
amend the cross  
bill.

THE COURT further ordered, that Cabell be at liberty to amend his *cross bill* by adding parties thereto, and ascertaining a particular day for the payment of the *modus* insisted upon by his bill, on his paying Churchill five pounds costs for this day's attendance. Further directions to be reserved.

MICH. TERM,  
6. GEO. 3.

### THE DUKE OF NORFOLK against TAYLOR.

Derbyshire, 9th December 1765.

The impropria-  
tor of the recto-  
ry of Glossop  
Dale, in Derby-  
shire, is entitled  
to the tithes of  
corn, grain, and  
other great  
tithes, arising in  
the village of  
Chindley, other-  
wise called  
Mainston Field,  
in the said parish  
and county.

THE bill stated, that the plaintiff was seised, in his *demeasne as of fee simple*, of the manor of Glossop, and of the rectory and parsonage impropriate of Glossop Dale, and of the advowson of the vicarage of the church of Glossop Dale, in the county of Derby, formerly part of the possessions of, or belonging to the monastery or abbey of Baseweke, otherwise Basywarke, in Wales; that he was then, and for the space of twenty years past and upwards had been, owner and proprietor of all and every the tithes of corn, grain, and other great tithes, within the township of Glossop, or the hamlet or village of Chindley, otherwise Mainston Field, and other the hamlets and villages in the said parish; that the said rectory of Glossop Dale, and the advowson of the vicarage of Glossop Dale, were, by letters patent dated the sixth of October, in the twenty-ninth year of Henry the Eighth, granted to George, then Earl of Shrewsbury (an ancestor of the plaintiff), his heirs and assigns, for ever; that all the great tithes of and for all and singular the lands in the several hamlets and other places within and throughout the whole of the parish, or certain yearly or other sums of money in lieu thereof, had from time to time, beyond the memory of man, always been paid and satisfied to the said plaintiff and his ancestors, as lay rectors of the said parish,

or

or to their respective lessees, by the several owners or farmers and occupiers of such lands; that the plaintiff, by indenture of lease dated the fifteenth of *October* 1745, did demise to *J. Moul* all the tithes of corn yearly arising within the tithing hamlet of *Chindley*, in the manor of *Glossop* (except the tithes within the estate of *G. Ward* in the said hamlet, and all *modus*es or other compositions for tithe hay or otherwise, as had been, or then was, or thereafter should be due and payable for the same out of the said premises), to hold the tithes of corn aforesaid to *Moul*, his executors, &c. from the second of *February* then preceding, for twenty years, yielding and paying the annual rent of sixteen pounds; that for several years after making the said lease, he received from the several owners, farmers, or occupiers of land within *Chindley*, all the tithes of corn arising and payable for or in respect of their several lands, either in kind, or certain yearly sums in lieu and full satisfaction thereof; that the defendant *Taylor* was seised in fee simple of, and had occupied and enjoyed for three years, arable land and ground lying in *Chindley* aforesaid, and had sown the same with corn, and had taken and carried away the same, and had paid to the plaintiff *Moul* a composition for the tithes of the said corn in the year 1757, but had not paid the same for the three following years; that the defendants *Lingard* and *Harrison*, or one of them, as lessees or lessee holding under *Mary Green*, had, for several years past, also occupied arable ground within *Chindley*, and had sown corn thereon, and had always paid to the said plaintiff the tithes thereof in kind, or a certain yearly or other sum of money in lieu thereof, until the year 1758; and that in 1759 they set out and delivered to the said plaintiff the tithes in kind of their wheat, but did not deliver in kind, or make him any satisfaction for any tithes or tenths of any other corn arising thereon after the year 1758; that all the defendants had absolutely refused to come to an account with, or make the said plaintiff any satisfaction for the tithes of corn growing on their said lands. The bill therefore prayed, that his majesty's attorney general might set forth whether he, on behalf of his majesty, claimed any and what right to the tithes of corn and grain arising from all or any, and which part of the lands in the said hamlet of *Chindley*, and occupied by the said defendants, on account of such lands not being in any parish, or on any other and what account particularly; and that the defendant *Taylor* might set forth what arable lands and grounds he was possessed of, or occupied, or enjoyed in the same hamlet or village of *Chindley*, since the first of *January* 1758, and discover the several sorts and quantities of each sort of corn which grew in, or upon, or arose from the said lands and grounds during the several years aforesaid, and answer and pay to the plaintiff *Moul* the tithes of all such corn which grew in, or upon, or arose from the said lands and grounds during the said years, and also his tithes for the same for the future during the continuance of the said

THE DUKE OF  
NORFOLK  
against  
TAYLOR.



THE DUKE OF  
NORFOLK  
against  
TAYLOR.

lease made to the plaintiff *Moult*; AND THAT the defendants *Harrison* and *Lingard* might set forth what arable lands and grounds they, or either, and which of them, were possessed of, or occupied, or enjoyed, in the said hamlet or village of *Chindley*, since the first of *January* 1759, and discover the several sorts and quantities of each sort of corn which grew in, or upon, or arose from the said grounds and lands during the said two years; and that they might answer and pay to the plaintiff *Moult* the tithes of all such corn which grew in or upon, or arose from the said lands and grounds during the said years; and also their or his tithes for the same for the future during the continuance of the said lease made to the said plaintiff; AND THAT the right of the plaintiff *the Duke of Norfolk* to all and every the tithes of corn and grain coming, arising, growing, or renewing from the lands in the said hamlet of *Chindley*, otherwise *Mainston Field*, belonging to, or in the occupation of, the said defendants respectively, might be established by the decree of this court.

The defendants *Taylor*, *Harrison*, and *Lingard* said, that, for any thing they knew to the contrary, *Henry the Eighth* might, by his letters patent, grant to *the Earl of Shrewsbury* the rectory of *Glossop Dale* and the advowson of the vicarage of *Glossop Dale*, part of the possessions of the monastery or abbey of *Basswarke*, in the county of *Flint*; that *the Duke of Norfolk* might be then seised thereof, and have been for some time past owner and proprietor of all and every the tithes of corn and grain, and all other the great tithes arising within the township of *Glossop*; but whether within all or any, and which of the villages and hamlets within the said parish, they knew not. They also said, that the great tithes of and for all or some of the lands lying in the several hamlets within the said parish had, for some time past, been paid in kind, or some satisfaction made for the same, to *the Duke* and his ancestors, or to their lessees, by the several owners or farmers and occupiers of such lands, and also from a mistaken apprehension, and want of due and proper enquiry into the right of the said liberty, hamlet, or village of *Chindley*, some, but not all sorts of tithes, of and for all or some of the lands lying within *Chindley*, had likewise sometimes, but not constantly, been paid in kind, or some satisfaction made for the same to *the Duke*, &c.; but they insisted, that the owners or farmers and occupiers of such lands were not bound by law to pay to *the Duke* or his ancestors, or their respective lessees, the tithes for all or any of the lands lying within *Chindley*, for that the plaintiffs claimed the tithes of the lands lying within the said hamlet, as being part of the parish of *Glossop*; but that the said hamlet or village of *Chindley*, otherwise *Mainston Field*, was not then, nor ever had been, any part of the aforesaid parish; and that no part of the lands lying therein ought to pay any tithes to the plaintiff, as rector or owner of the rectory and advowson of the

the parish church of *Glossop*. They further said, that at the time of the grant to the *Earl of Shrewsbury*, *King Henry the Eighth* was seised, in right of his duchy of *Lancaster*, of the forest of *High Peak* (the same being part of the ancient possessions of the said duchy); that it was then also an hundred, and called the hundred of *High Peak*; that part of the said forest was not within the limits of any parish whatsoever; that the hamlet or village of *Chindley*, otherwise *Mainston Field*, then was a tract of land lying within the limits of the said forest; but was not then, nor ever had been, within the limits of any parish whatsoever, but was *extra-parochial*, and called by the name of *Chindleys*, otherwise *Mainston Field*; that the said forest of *High Peak*, including the said tract of *Chindley*, did, after the death of *Henry the Eighth*, descend, together with the crown of *England*, to *James the First*, who, by his letters patent as well under the seal of *England* as of the duchy of *Lancaster*, dated the ninth of *January*, in the twenty-first year of his reign, granted to *E. Badbye* and *William Wellden*, their heirs, &c. for ever, all that his majesty's herbage, and all other his lands called *Mainston Field*, &c. as in the said grant is mentioned. They therefore submitted, that all the right, title, estate, and interest, of, in, and to the said hamlet, and all the land and soil therein, and all tithes of corn, grain, and all other the great tithes coming within the same, if any such there were, did legally vest in and become the rightful and legal estate and inheritance of the said *Badbye* and *Wellden*; and they said, that they were the more induced to believe the same, because the tithes of the village were expressly granted to them, which they apprehended would not have been done if the said village had been within the limits of the parish of *Glossop*.

THE DUKE OF  
NORFOLK  
against  
TAYLOR.

The defendants *Taylor* and *Lingard* insisted, that the several lands in their respective possessions and occupations were part of the premises so granted; and that, by several mesne conveyances, they were then become vested in the said *Taylor*, and the several persons under whom they held the same as tenants. They also insisted, that the said hamlet or village was before, and at the time of making the said grant, and ever since had been considered an extraparochial place, and not to be within any part of the parish of *Glossop*, or any other parish; and that it was not described in the said grant as such. They further insisted, that before the dissolution of the monastery of *Basylwarke* (to which the said rectory of *Glossop* belonged), no tithes were paid to the said monastery by any occupiers of lands within the said village; and that no such tithes were paid after the grant of the said rectory to the said *Earl of Shrewsbury*, or to those claiming under him, until of late years; that until the fourth year of *Charles the First*, and for some time afterwards, the said hamlet of *Chindley* lay open to the said forest, and was unclosed and uncultivated, and did not produce any corn, grain, or hay; and

THE DUKE OF  
NORFOLK  
against  
TAYLOR.

and that no tithes of the same had been paid to any person until long after the fourth year of *Charles the First*; that the parishioners of *Glossop Dale* had never taxed, rated, or assessed any of the inhabitants or occupiers of lands or houses in *Chindley* for or towards the rates or taxes of the said parish at large, or to the repairs of the said parish church or chapel therein, or to any other public parish rate, &c. ; that the said inhabitants or householders in *Chindley* had never served, or been nominated, or elected to any parish office, &c. But they admitted, that several of the owners and occupiers of houses and lands had for some time, down to the year 1758, paid *Easter* dues to the vicar of *Glossop*, and also one penny a-year, when demanded, in lieu of tithe hay growing on the lands in their occupation, to *the Duke* and his ancestors and the vicar, or one of them; that the banns had been published in the said church, and the parties married there; that the inhabitants when required paid their dues for baptisms and burials to the vicar thereof; that the collectors of the land tax and overseers of the poor of the said hamlet had, for some time then past, collected and received from the plaintiff *Moult* the land tax and poor levies for the tithes of all or some part of the corn growing upon lands lying within the said hamlet; but whether upon the lands occupied and enjoyed by the defendants they could not set forth. They also admitted, that there was a protestant dissenting chapel or meeting-house for religious worship, and a yard adjoining thereto in the said hamlet, in which yard some few were buried; but they said, that the greater part of the inhabitants of *Chindley* had been buried at *Chapel en le Frith*; and that they had no burial places assigned for any of the inhabitants of *Chindley* in the church or church yard belonging to the parish of *Glossop*. They further said, that they believed that divers parts of the forest of *High Peak* had, from time to time, been *assarted*; which parts of the said forest being extra-parochial, as well as *Chindley*, the tithes of such parts, under the name of *assart tithes*, were paid to the proprietors of lands where the same arose, or to their tenants or lessees.

The defendant *Taylor* admitted, that his uncle *G. Green*, who was the owner of the land which he occupied and was seised of in fee, and also occupier of land which he held as tenant to *P. Galliard*, had paid tithe in kind, or compounded for the same with the plaintiff for the corn he had grown and carried away from off the same. He also admitted, that for three years he had possessed and occupied arable land and ground lying in *Chindley* aforesaid, as mentioned in his answer, of all which said pieces of land he was, and for some time then past had been, seised in fee simple (except two or three closes he held as tenant to the said *P. Galliard*); and he admitted, that for the year 1757 he had agreed with the plaintiff *Moult*



to pay him twelve shillings for the tithes of all his corn ; but that he had refused since to pay and satisfy him for the same : and he set forth an account of the corn he had grown in the said years upon the said lands, but not the values thereof.

THE DUKE OF  
NORFOLK  
against  
TAYLOR.

The defendant *Lingard* also admitted, that for some time he had occupied, as tenant to *Mary Green*, by lease, some arable land, as set forth in his answer ; and that to the year 1758 he had paid tithes in kind to the plaintiff *Moult* ; but that since that time he had refused to pay the same for the aforesaid reasons : and he set forth an account of his tithe corn.

The defendant *Harrison* insisted, that he did not then occupy, and that he never had occupied, any land or ground whatsoever within the village of *Chindley* ; that he had never sowed any lands therein with seed for the growing of corn ; and that he had never taken or carried away any corn from any land or ground there for his own use.

The Attorney General said, that he was a stranger to all and singular the matters and things in the bill contained, and submitted his majesty's right and interest in the matters in question to the care and direction of the court.

The plaintiffs replied to the answers of *Taylor* and *Lingard* ; the defendants rejoined ; and witnesses were examined on both sides ; and upon hearing counsel several days ; and the defendant's counsel objecting to the want of proper parties, the attorney general of the dutchy court of *Lancaster* not being before the court ; but waiving the same on hearing the plaintiff's counsel ; and on reading all the proofs taken in the cause on both sides ; and several exhibits, viz. a paper book, entitled, "*Glossop Visus Recep. Divers. Oblr. Pddea Vill. Roc. p. Manus* ; "*Thoma Wagstaffe, pro Cur. ibidem à Crastino Sancti Martini* ; "*in Hieme, Anno Regni R. Henr. 6th, Undecimo, &c.* ;" the grant to *George, Earl of Shrewsbury*, dated the sixth of October, in the twenty-ninth year of *Henry the Eighth* ; a copy of an indenture, dated the eleventh of *March*, in the eighteenth year of *Charles the First*, between *Thomas Yeaveley* and *Thomas Moult* and *Ralph Gee* ; the probate copy, dated the twenty-second of *July* 1668, of the last will of *T. Moult*, dated the nineteenth of *June* 1666 ; various ancient receipts, indentures, rentals, *Easter* books, and agreements, and various other exhibits ; and upon full debate of the matter ;

THE COURT ordered the deputy remembrancer to take an account of what was due from *Taylor* (the said defendant not opposing the same) to *Moult* for the tithes of all the corn and grain which had arisen from land and ground occupied by him in the hamlet or village of *Chindley*, otherwise *Mainston Field*, and more particularly set forth by him in the said answer put in

THE DUKE OF  
NORFOLK  
against  
TAYLOR.

by him and *Lingard* and *Harrison* to the said bill, for and during the several years of 1758 and until the thirteenth of *February* 1765 (being the time of the expiration of the lease from *the Duke* to *Moult* of the said tithes); and that the defendant *Taylor* do pay to the said plaintiff what the said deputy remembrancer shall so report due to the said plaintiff for the same.

IT WAS ALSO REFERRED to the deputy remembrancer to take an account of what was due to *the Duke of Norfolk* from *Taylor* for the value of the tithes of all the corn and grain which arose from the said several pieces of land and ground from the expiration of the said lease until the time he should make his report thereof; and *Taylor* was ordered to pay *the Duke of Norfolk* what should be reported due to him for the same.

IT WAS ALSO REFERRED to the said deputy remembrancer to take an account of what was due from *Lingard* to *Moult* for the tithes of all the corn and grain (except the tithes of wheat which grew upon the close called *the White Knowl Meadow* in the year 1759, and which had been paid and satisfied to *Moult*), which arose from the several parcels of arable land and ground occupied by him in the said hamlet or village of *Chindley*, otherwise *Mainston Field*, and more particularly set forth by him in the said answer put in by *Taylor* and him the said *Lingard* and the said *Harrison* to the said plaintiff's bill, for five years, ending 1763 (he, *Lingard*, not having occupied any arable land or ground whatsoever in the said village or hamlet of *Chindley*, otherwise *Mainston Field*, since 1763); and *Lingard* was ordered to pay *Moult* what the deputy should report to be due to him for the same.

IT WAS FURTHER ORDERED, that *the Duke of Norfolk's* right and title to the tithes of corn and grain growing and arising from the several pieces or parcels of arable land and ground hereinafter mentioned, lying and being in the said hamlet or village of *Chindley*, otherwise *Mainston Field*, in the county of *Derby*, and being in the defendant *Taylor's* possession and occupation, that is to say, *the Stable Meadow*, *the Croft*, four closes called *the Mill Fields*, *the Moseley Marsh*, *Botham*, two closes called *the Two Acres*, *the Moseley Meadow*, *the Lower Moseley Field*, *the Moseley Brow*, *the Long Brow*, *the Upper Brow*, three closes called *the Back of the Lee*, *the Bowers Clough*, *the Churn Piece*, and two closes part of the three closes called *the Common Pits*, and a piece of land called *Barber Acre*: all which said last-mentioned pieces or parcels of land he, the said defendant *Taylor*, in the said answer put in by him and the said *Lingard* and *Harrison* to the plaintiff's bill, set forth that he was seised of in fee simple, be, and the same is hereby established.

IT WAS FURTHER ORDERED, that *Taylor* and *Lingard* do pay to the said plaintiffs their costs of this suit, to be taxed.

IT WAS FURTHER ORDERED, that the bill, so far only as the same related to the defendant *Harrison*, be dismissed, with forty shillings costs, to be paid by the plaintiffs to *Harrison*; his answer not having been replied to, or he brought to a hearing of the cause, because it appeared by his answer that he was no occupier of any lands in the said hamlet of *Chindley*.

All subsequent costs and further directions to be reserved till after the report.

The deputy remembrancer made his report, dated the eighteenth of *February* 1768; and upon reading the decree and report, no exceptions having been taken thereto; and hearing counsel for the plaintiffs;

THE COURT, on the twenty-third of *February* 1768, ordered the same to be ratified and confirmed, and the defendant *Taylor* to pay to the plaintiffs three pounds, fifteen shillings, remaining due for all his tithes of corn and grain, with the sum of two hundred and sixty pounds, two shillings, and threepence, costs taxed.

THE COURT FULL.

MATHER *against* HOLMWOOD.

*Kent*, 13th December 1765.

MICH. TERM,  
6. GEO. 3.

THE rector of *Biddenden*, in the county of *Kent*, claimed all the tithes, great and small, that the defendants had respectively held in the year 1763 in the parish; and stated, that they had set out the tithes of corn and grain for that year in a fraudulent manner; and that the plaintiff had refused to take them away. The bill therefore prayed, that the defendants might be decreed to account with the plaintiff for the tithes by them respectively subtracted in 1762, and pay what should be due to him on account thereof, and that an injunction might issue.

The rector of *Biddenden*, in *Kent*, claims the tithes of corn and grain for the year 1762.

S. C. 6. Bac.  
Abr. 8vo edit.  
737.  
S. C. Rayn. 522.

The defendant *Holmwood* admitted, that the plaintiff was rector of the parish, and entitled to all tithes, both great and small: and he particularized the several lands he occupied therein in the year 1762, and the quantities of corn and grain arising therefrom in that year; and insisted, that it then was, and had always been the usual custom of that part of the country for the farmers who sowed corn or grain to let it stand till it was full ripe before they cut or reaped it; to carry it in immediately it was cut and could be put into proper shocks for tithing; and not to stay till a whole field was cut down, for fear of rain coming and spoiling it; for that the farms being small, and harvesters scarce, the farmers generally reaped and mowed their own corn; and that if they were to stay till a whole field was cut before they carried in any part, it would be so

The defendant says, that it is the custom of the country not to cut the corn until it is full ripe, and then to let it out in shocks, and tithe the same as it is cut down, without waiting until the whole field is reaped;



MATHER  
against  
HOLMWOOD.

that he had set out his tithes of corn in the year 1762 according to the said custom; but that the plaintiff refused to take them away.

long about, that they would be in danger of losing all their corn in case of wet weather coming on; that it was the general course of the country, and the constant method for farmers where their corn was taken in kind, to set out the tithes of such corn and grain as they cut it, and as soon as they could put it into proper shocks for tithing, as it would be attended with the greatest mischief and inconveniency, as well to the rector as to the farmer, if they were obliged to stay till the whole field was cut down before they set out the tithes of any part. He further said, that in the year 1762 he had set out his tithes accordingly; and he denied that he had taken away any corn or grain whatever without setting out the tithes thereof to the plaintiff, or making him a satisfaction for the same. He denied, that he had ever pretended that there had been any *modus* for time immemorial, or that there was a certain *modus*, or a constant invariable customary payment paid and payable by the occupiers of farms and lands in the defendant's possession in particular, to the rector, in lieu of tithes of all corn and grain within the said parish and the titheable places thereof, or that he knew of any; but he said, that the rectors of the several parishes in the *Weald*, and particularly the plaintiff's predecessors, finding it for the common benefit of themselves and the parishioners to compound for their tithes of corn and grain by a pecuniary payment by the acre in lieu thereof, had from time to time immemorially been used to agree or compound for the same accordingly; but he admitted, that such payments had been made in pursuance of particular compositions or agreements with the respective rectors from time to time, and not otherwise. He also said, that the plaintiff, for some time after he came to the rectory, had accepted of the usual composition; but that, for several years past, he had refused so to do, and had insisted upon having the tithes of all corn and grain paid in kind. He denied, that he had ever threatened to bring an action against the plaintiff for not taking away his tithes, as set out in kind, according to the usual custom; and said, that he was always ready and willing to set out the same as usual, and hoped he should not be compelled to do otherwise.

The other defendants put in the like answer.

The cause  
heard.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel; and reading the answer; and on full debate;

The defendants  
consent to pay  
5l. 12s. 8d. for  
the tithes de-  
manded.

THE COURT ordered, by consent of the parties, that the defendants do forthwith pay to the plaintiff the sum of five pounds, twelve shillings, and eightpence (*Fynch Coppinger*, solicitor for the defendants, undertaking to pay the same); and the said plaintiff, now present in court thereupon agreeing to accept the said sum as a satisfaction for the tithes demanded by

his bill, and to waive the taking any account thereof (a), it was referred to the deputy remembrancer to tax the plaintiff his costs, except as to the demand of the tithes arising from three acres of wheat in the occupation of *Holmwood*.

MATHEW  
against  
HOLMWOOD.  
The deputy to  
tax the plaintiff  
his costs.

(a) It is said, that the Court was of opinion in this case, that all the wheat growing in a field must be cut down before the tithe of any part thereof can be set out, S. C. 6 Bac. Abr. 737. But it seems, that this point was after-

wards more fully considered in the case of *Ereftin v. Ruffle*, in this court, in Michaelmas Term, 9. Geo. 3. in which it was determined, that the tithe may be set out as often as a reasonable quantity is cut down.

## CLARKE against STAPLER.

Wiltshire, 27th January 1766.

HILARY TERM  
6. GEO. 3.

THE vicar of *Highbworth*, in the county of *Wilts*, claimed all the small tithes, and particularly the tithes of clover seed, rye grass seed, and other grass seeds, which had been sown and grown yearly therein, during the three preceding years; and stated, that the defendants *Fowler* and *Lawrence* had, during that time, occupied land in the parish, on which they had sown clover seed, rye grass seed, saintfoin seed, and other grass seeds; and that they had reaped and taken the same away, without making him any satisfaction for the tithes thereof. The bill further stated, that the defendants *Stapler* and *Pickett* rented part of the parsonage, the great tithes of the parish, and the glebe land belonging thereto, under the defendant *Harvey*, the impropiator thereof; that they likewise had clover, rye grass, saintfoin, and other seeds, as well as other small tithes, upon the glebe lands; and that they had taken and carried them away without making him any satisfaction for the same. The bill further stated, that there had likewise become due from the defendants to the plaintiff, as vicar, divers other ecclesiastical dues; AND PRAYED, that they might respectively account with him for the said tithes and dues; pay him the amount thereof; set out all such tithes as should in future arise; and that his right to the said tithes might be established.

The vicar of  
*Highbworth*, in  
*Wiltshire*, is entit-  
led to the tithes  
of clover seed,  
rye grass seed,  
and saintfoin  
seed, the same  
being small tithes.

The defendants *Fowler* and *Lawrence* admitted, that the plaintiff was vicar of the parish; but said, that they could not tell with certainty whether he was entitled to the tithe of clover seed, rye grass, and other grass seeds arising therein, or to any compensation for same; nor whether such grass seeds, or either of them, are to be accounted as great or as small tithes.

The defendant *Fowler* admitted, that he occupied several closes belonging to his farm in *Bury Town*, in the said parish; and that he had sown and planted several quantities of land with clover and rye grass, which had produced, when harvested and threshed, several quantities of clover seed and rye grass seed.

The

CLARKE  
against  
STAPLER.

The defendant *Lawrence* admitted, that he had the same on his farm in *Seven Hampton*, in the said parish.

Both denied, that they had sown any saintfoin seed or other grass seeds, except as aforesaid.

The defendant *Fowler* said, that the tithes of all the several sorts of grass sown by him, as all other the great tithes yearly arising and increasing in and upon his farm and lands in *Bury Town* aforesaid, had, during the said time, been claimed and taken in kind by the defendant *Stapler* or her agents, as lessee of the great tithes of *Bury Town* under *E. Harvey*, clerk, the impropiator thereof, who claimed title thereto.

The defendant *Lawrence* said, that the tithes of his lands in the village of *Seven Hampton*, in the said parish, had been, in like manner, claimed and taken in kind by the defendant *Pickett*, lessee of the great tithes under *Mr. Harvey*, the impropiator thereof.

The defendant *Fowler* said, that he had, for the time aforesaid, paid to and for the use of the plaintiff, the yearly sum of five pounds, ten shillings, as a composition for and in lieu of all such small tithes and other ecclesiastical dues as arose or increased within that time upon his farm and lands in *Bury Town*, and which he apprehended the plaintiff, as vicar, was entitled to; and he hoped, that in case the tithe of clover seed and rye grass seed cut by him should be deemed due to the vicar as a small tithe, yet that he ought not to pay or make the plaintiff any other satisfaction for the same by reason of such composition.

The defendant *Lawrence* said the like as to the composition of two pounds, two shillings, for his farm and lands in *Seven Hampton* aforesaid.

The defendant *Harvey*, clerk, admitted, that the plaintiff was vicar of the parish, and as such entitled to such small tithes and ecclesiastical dues arising therein as had been immemorially paid to his predecessors, but not otherwise; and he denied that he was, as vicar, entitled to the tithes of clover seed, rye grass seed, saintfoin seed, or any other grass seeds sown and grown in the parish, either by virtue of any ancient endowment, usage, or custom observed therein, or otherwise howsoever; or that his predecessors had received or taken the said tithes in kind, or any recompence in lieu thereof; but that, on the contrary, he *Harvey*, being seised or possessed of an equitable interest in the rectory impropriate of *Highbworth*, was entitled to the tithes in kind of all clover seed, rye grass seed, and all other grass seeds sown or grown within the parish; and that his predecessors had, for time whereof the memory of man was not to the contrary, or from the time of the introduction of such artificial grass into this kingdom, constantly and uniformly received the



CLARKE  
against  
STAPLER.

the great tithes thereof. He said, that for twenty-four years and upwards he had been seised or possessed of an equitable interest in the said rectory impropriate; and that he, or those under whom he claimed the same, had always been in the quiet, peaceable, and uninterrupted possession thereof, and had always received and taken, by themselves or their lessees, the tithes of the seeds of clover, rye grass, saintfoin, and all other grass seeds growing or arising within the said parish, or some recompence for the same in lieu thereof. He further said, that by the ancient and uninterrupted custom of the said parish, when any clover, rye grass, saintfoin, and other artificial grass growing therein, had been suffered to stand for seed, the same had always been considered as grain; and that, by the like custom, when the same was cut down sooner, it had been considered as hay. He denied all knowledge of any entry or endowment of the parish which then remained in the registry of the dean of *Salisbury*, or elsewhere; but contended that if there were any, it did not affect his right, as impropiator of the said parish, to the tithe of such seeds; for that such tithes had been immemorially and invariably paid to the impropiator aforesaid. He further said, that the defendant *Stapler* had rented of him the great tithes of *Bury Town* for six years past, and the defendant *Pickett* the tithes of *Seven Hampton* for thirteen years; and that they severally claimed to be entitled to the tithes of such seeds, as lessees thereof under him, he believing himself to be well entitled thereto, and to have a full power of leasing the same to them accordingly.

The defendants *Stapler* and *Pickett*, as lessees of *Harvey*, put in the like answer as to the right, &c. of the aforesaid tithes; and said, that they had therefore kept no account of what they had grown on their said lands, or of what they had received of the other defendants as lessees thereof.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel several days; and upon the plaintiff's counsel offering to read the copy of an entry in the register book of the peculiar in the registries of the dean of *Salisbury*, and the same being objected to by the defendants counsel; and upon reading, by consent of the defendant's counsel, the entry of an endowment of the said vicarage, dated the nineteenth of *September* 1405, remaining in the registry of the dean of *Salisbury*, the ordinary of the said vicarage; the depositions of several witnesses; the answers; several books belonging to the late vicars of *Highworth*, containing an account of the privy tithes and the sums of money paid in lieu or composition thereof within the said parish to the respective vicars for the time being; and upon hearing the defendant's counsel; and reading several depositions  
on

CLARKE  
against  
STAPLER.

on their behalf ; and also two receipts, viz. one signed *Edward Clarke* to the defendant *Fowler*, dated the thirtieth of *May* 1764, for five pounds, ten shillings, composition for privy tithes ; another signed *Edward Clarke* to the defendant *Lawrence*, dated the twenty-second of *November* 1762, for one pound, eleven shillings composition for privy tithes ;

THE COURT declared, that the tithes of clover seed, saintfoin seed, and rye grafs seed, are *small tithes* ; and that the plaintiff, as vicar of the parish of *Highbworth*, in the county of *Wilts*, was well entitled to the tithe of such clover, saintfoin, and rye grafs seeds.

But it not appearing to the Court, that *Stapler* had, in 1761, any rye grafs seed and saintfoin seed, or any clover seed, rye grafs seed, and saintfoin seed, during the remainder of the time in the bill mentioned ; or that *Pickett* had any clover seed, rye grafs seed, or saintfoin seed, during the time in the bill ; or that *Lawrence* had any saintfoin seed or rye grafs seed ; or that *Fowler* had any saintfoin seed during the time in the bill mentioned ;

THE COURT further ordered the bill, so far as it seeks an account of such respective tithes against the said defendants, to be dismissed without costs.

THE COURT further ordered *Stapler* to account for the tithes of the three acres of clover seed by her grown on the lands in her own occupation within the said parish of *Highbworth* during 1761 ; that *Stapler* and *Pickett* do likewise account for the tithes of clover seed and rye grafs seed by them respectively taken off, and received from the defendants *Fowler* and *Lawrence* during the time mentioned in the bill ; and that *Stapler* do also account for the tithe of clover seed by her taken off and from the lands of *J. Stone* in her answer named : and the plaintiff consenting to accept of and from the defendants, the lessees, the value of such tithes respectively ;

IT WAS FURTHER ORDERED, that the defendants do pay to the plaintiff his costs of this suit, to be taxed.

Subsequent costs and further directions to be reserved till after the report.

BOWLES

BOWLES *against* LUCKETT.HILARY TERM  
6. GEO. 3.

Gloucestershire, 28th February 1766.

THE bill stated, that the plaintiff was, on the twentieth of October 1761, duly instituted into the vicarage and parish church of *Leachlade*, in the county of *Gloucester*, and as vicar thereof became impropiator and owner of the rectory of the said parish under the will of *L. Bathurst*, deceased; that as such impropiator and vicar, he was entitled to all tithes yearly arising in the said parish; that the defendant had, for several years, occupied a farm therein, and had titheable matters of various species yearly arising thereon; that he had duly set out his tithes of corn and hay to the year 1763, except the tithe of half an acre of land, and the tithes of such corn and hay as grew upon a certain part of the said farm, called *the Priory Lands*; that he had in every year corn, grain, and hay growing upon *the Priory Lands*, the tithes whereof he had carried away and converted to his own use, without setting out the same; that in the year 1762 he had refused to set out the tithes of half an acre of wheat which was not part of *the Priory Lands*, and had converted the same to his own use; that he had also fed and depastured upon his said farm several milch cows, which had produced milk and calves, and had kept sheep, which had lambs and wool, and had brought up upon the said farm, calves, pigs, and colts, the tithes of which were due to the plaintiff; that he had also depastured several barren and unprofitable cattle, and also taken sheep belonging to persons not parishioners to be fed and agisted for hire upon his said farm, for which the plaintiff was entitled to tithe herbage and agistment; that he had also turnips growing on his said farm, part of which he had sold; and that he had cut underwood, and made it into faggots, and sold the same, the tithes whereof were due to the plaintiff. The bill therefore prayed, that the defendant might be decreed to account for the several titheable matters aforesaid.

The rector and vicar of *Leachlade*, in the county of *Gloucester*, claims the great and small tithes of a farm in the defendant's possession, and particularly of a certain field called *the Priory Lands*, part of the said farm.

The defendant admitted, that the plaintiff was vicar of *Leachlade*; that *L. Bathurst* being entitled to the rectory had, by his will, devised to the vicar and his successors for ever all that the rectory impropriate, and all his estates therein, in law or equity, and all the tithes or spiritual profits whatsoever parcel, or reputed parcel of the said rectory impropriate, to the end that the same might be enjoyed by the vicars, rectors, or incumbents of the said church of *Leachlade*, and their successors for ever; that the plaintiff, as vicar there, became impropiator of the said rectory, and as such was entitled to all tithes, both great and small, arising therein, or to such *modus* or *modus*es for the same as the former vicars or rectors thereof had, or ought to have had or received; but he denied that the plaintiff was entitled to tithes of *the Priory Lands* in the defendant's occupation; and said, that he had ever held them tithe free. He admitted, that he held a considerable farm in the parish; that part of the said farm was *the Priory Lands*; and that the same consisted

The defendant says, that *the Priory Lands* were parcel of the possessions of the priory of *Saint John*; that they were held tithe free by the prior at the time the priory was dissolved; and therefore that the same are tithe free in the hands of the grantee of the crown.



Bowt 23  
against  
LUCKETT.

that he had paid  
a gross sum to  
the churchwar-  
dens of the pa-  
rish for the tithes  
of his other lands  
during the va-  
cancy of the vi-  
carage; and that  
the plaintiff had  
accepted the  
same.

consisted of a messuage, a garden with its appurtenances, and several fields, as in the answer mentioned; but he said, that *the Priory Lands* were parcel of the possessions of the priory or monastery of *Saint John*, formerly called "The Manor or Farm of *Saint John at Saint John's Bridge*," and the site of the said priory; that the said priory or monastery was dissolved by the statutes of the twenty-seventh, thirty-first, or thirty-second year of *Henry the Eighth*, some or one of them, and was vested in the said king, and in his actual possession; that the prior or head of the said priory, at the time of the dissolution thereof, was seised of *the Priory Lands*, in the defendant's occupation, in his demesne as of fee, discharged of tithes, and that they had been always so held by the said prior; that *the Priory Lands* so vested in *Henry the Eighth* came to his grantee or grantees, and the persons claiming under them, discharged and freed from the payment of tithes in as ample manner as they had been held by the prior of the said monastery at the dissolution thereof; that the said *Priory Lands* were granted, by letters patent of *King James the First*, to *R. Bathurst* and his heirs, and by divers mesne conveyances had descended to *J. Pullen*, under whom he, the defendant, occupied the same: and he insisted, that they were exempt from the payment of tithes, and that no tithes had, within the memory of man, been paid for *the Priory Lands*. He also set forth, that it appeared from an ancient terrier, dated the twenty-third of *September 1680*, signed by the then vicar and churchwardens of *Leachlade*, that *the Priory Lands* were exempt from tithes, it expressly mentioning, "that there was no land tithe free in the parish but what belonged to the priory of *Saint John Baptist*;" that by another terrier, signed by *Richard Castle*, vicar of *Leachlade*, and the then churchwardens, it is mentioned, "that *the Priory Lands* are tithe free." He admitted, that he had had titheable matters of various kinds upon the said farm; and said, that he had duly set out all his tithes of corn and hay to the year 1763, except for *the Priory Lands*, and except the half acre of land in the bill mentioned, and not parcel of *the Priory Lands*; and that the not setting out the tithes of the said half acre was done by mistake; but that they had been since set out. He further said, that previous to the plaintiff's induction he compounded for the tithe of such part of his farm and lands as were not parcel of *the Priory Lands*; and that the vicarage having, on account of some dispute, been vacant some time before the plaintiff was instituted, he did, for the year 1761, compound for all the tithes of his said farm, except *the Priory Lands*, with the then churchwardens, for eleven pounds, eight shillings, and sixpence, and took their receipt; and that the plaintiff had accepted the same in lieu of his tithes, except of *the Priory Lands*, for the said year: and he insisted upon such payment in discharge of the said tithe; and that he ought not to account for the same. He also admitted, that since the plaintiff's induction he had in each year corn, grain, and hay, growing

growing on *the Priory Lands*, and that he had carried the same away without setting out the tithe thereof; but he set out in his answer an account thereof, together with the values. He also admitted that he had several milch cows and calves on his said farm, but denied that tithes were due for the same, and insisted that a certain ancient *modus* of ninepence for each milch cow, and threepence for each calf yearly, had time immemorial been paid and payable by the occupiers of lands subject to the payment of tithes, to the vicar or rector; and that the said *modus* had been accepted in lieu of tithe milk and calves. He set forth the number of sheep and lambs he had kept on his farm, with the particular quantities of wool, and admitted that the tithes for such sheep and wool kept on his farm, exclusive of *the Priory Lands*, were due to the plaintiff; but he said, that a certain ancient *modus* of two shillings for every tenth lamb, had been paid or payable, time immemorial, in lieu of tithes in kind of lambs fed within the parish upon land subject to the payment of tithes. He said that he had not fed any barren or unprofitable cattle on his farm, except three dry cows, in 1763, and denied that tithes were payable for the same, but that a certain ancient *modus* of threepence yearly had been paid, time immemorial, in lieu of tithes of each dry cow, by the occupiers of land subject to the payment of tithes. He admitted, that during the said two years he had agisted for hire several cattle and sheep of other persons who were parishioners, but he submitted to the court whether the plaintiff was entitled to any tithe for cattle and sheep so depastured for hire. He also set forth the several other species of titheable matters which had arisen upon his farm, together with the values. He admitted that he had been applied to by the plaintiff to account for the tithes which remained unpaid, and he said that he was willing to settle the same, except for *the Priory Lands*, for which he insisted that no tithe was due. But he said, that with respect to the sheep and other cattle fed and depastured by him on his farm, the same having been fed on *the Priory Lands*, as well as on other parts of his said farm, he ought only to pay tithes for the wool of the said sheep so fed and depastured, and the *modus*, in proportion to the value that the other lands bore to *the Priory Lands*.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel and reading the depositions of several witnesses, and the proofs in the cause,

THE COURT ordered the bill, so far as it demanded tithes in kind for milk and calves arisen from the cows depastured on lands not called *the Priory Lands*; as to the half acre in the pleadings mentioned; and as to the depasturage of dry cows

BOWLES  
against  
LUCKETT.

that there is a *modus* of ninepence a milch cow, and threepence a calf, in lieu of the tithe of the milk of such cow and calf.

that there is a *modus* of two shillings in lieu of every tithe lamb;

that there is a *modus* of threepence a year for every dry cow, in lieu of the pasturage thereof;

that no tithe is due for agisting the cattle of parishioners;

that the said *modus* ought to be paid in proportion as the said cattle were fed on the lands that were not tithe free.

The cause heard.

The bill dismissed as to tithes in kind for milk and calves.

on

**BOWLES**  
*against*

**LUCKETT.**

The defendant decreed to account for tithe milk and calves according to the *modus*.

and to account for the other tithes in kind.

on the lands not called *the Priory Lands*, to be dismissed with costs to be taxed.

THE COURT further ordered the deputy remembrancer to take an account of what was due from the defendant to the plaintiff for the several *modus*es in lieu of milk and calves and depasturage of dry cows above mentioned, but that the same be without costs.

THE COURT further ordered the deputy remembrancer to take an account of the several other titheable matters arisen from the lands in defendant's possession not called *the Priory Lands* in the said years; and the defendant to pay costs relating to such other titheable matters to this time to be taxed.

The lands called *the Priory Lands* declared not to be tithe free, and the defendant decreed to account accordingly.

THE COURT declared, that *the Priory Lands* in the pleadings mentioned were not exempt from the payment of tithes, and thereupon decreed the deputy remembrancer to take an account of the tithes arisen therefrom for the said years, and that the defendant do pay the plaintiff his costs relating to such tithes to this time, &c.

The report confirmed.

The deputy remembrancer made his report dated the twenty-fifth of *November* last; and upon hearing counsel and reading the decree and report,

The Court ordered, on the eighth of *December* 1767, the said report to be ratified and confirmed, and the defendant to pay to the plaintiff what was reported due for the said tithes, *modus*es, and costs, together with subsequent costs to be taxed by the said deputy remembrancer.

THE COURT FULL.

TRIN. TERM,  
6. GEO. 3.

**HELYAR** *against* **TRIST.**

*Devonshire*, 12th *June* 1766.

The owner of the tithes of *Harburton* and *Hollywell*, in *Devonshire*, claims the tithes of corn and grain in the parish of *Harburton*.

THE bill stated, that on the fifteenth of *February* 1755, the dean and chapter of *Exeter*, in consideration of a surrender of a former lease, determinable on the deaths of *W. Helyar* and *R. Helyar* deceased, granted to the plaintiff *He'yar*, his executors, &c. the garb, otherwise the *titthing sheaf*, of corn and grain of the parish of *Harburton*, and also of the rectory or parsonage of *Harburton*, in the county of *Devon*, and all ways, paths, passages, privileges, and appurtenances, &c. for ninety-nine years, determinable on three lives, at the yearly rent of thirty-three pounds, six shillings, and eightpence; that by indenture, dated the second of *June* 1760, made between the plaintiff *Helyar* and the plaintiff *Whiteway*, he did demise to him all his garb, otherwise *titthing sheaf*, of corn and grain of *Harburton* and the rectory aforesaid, and also of *Hollywell*, otherwise *Hallwell*, during the said thereby demised term, together



gether with the barn and mowstables which were the inheritance of the plaintiff *Helyar*, distinct from the said tithes, to hold for twenty years, if *T. B. Banbury*, clerk, so long lived, as in the said bill is more fully mentioned; that from time immemorial it had been customary for all the farmers and occupiers of lands in *Harburton* and *Howell* to give verbal notice to the owner or occupier of the tithes for the time being, or to his proctor, who, or one of them, always resided at *Harburton* during the tithing season in every year, to attend and see the corn justly tithed and set out, previous to the housing the corn; that the said custom had been constantly observed there without interruption, and that no person whatsoever had ever pretended to carry away or tithe his corn without giving such previous notice; that notwithstanding the said custom the defendant *Newland*, in the last corn harvest, fat out the tithes of a field of wheat in *Harburton* called *Elementary*, being part of an estate called *Mary Lane's Land*, and rented by him of the defendant *Trist*, and housed his nine parts without giving the plaintiff *Whiteway* notice of setting out such tithes; that he afterwards sent him word he would prosecute him for not fetching away his tithes; and that the said tithes of corn were stolen or spoiled. The bill therefore prayed, that the defendant *Newland* might come to an account with *Whiteway* for the tithes set out by him without giving notice as aforesaid; that he might be restrained by an injunction of this court from bringing any action at law against the said plaintiff for not fetching away the said tithes; and that the said custom might be established.

The defendants admitted, that the plaintiff *Helyar* held the tithes of corn arising in *Harburton* and *Howell* under lease, as stated in the bill; and that *Helyar*, or his farmers or tenants, were entitled to the tithes of all corn growing within the said parishes; but they said, that whether such lease had been granted to the plaintiff *Whiteway* they knew not; and denied that for time immemorial there had been such a custom to give verbal notice, as stated in the bill, or that the same had been constantly observed; they said that they had usually given notice, verbal or otherwise; but that when it was given it was merely given out of civility, and not from any obligation by virtue of such pretended custom.

The defendant *Newland* said, that he had, in the month of *August*, duly set out his tithes in *Elementary field*; that the same were fairly set out by every tenth stich, and, when a less number than ten stiches remained, by every tenth sheaf; and that such was the method commonly used in *Harburton* and other parishes in the neighbourhood. He denied, that he had taken away the said tithes, or that he had let the hogs eat them, or that he had

**HELVAR**  
against  
**TRIST**

and state, that by the custom of the parish the farmers are obliged to give the owners of the tithes verbal notice when they set them out;

but that the defendant set out his tithes without giving any notice, and that they rotted on the land.

The defendant denies the custom.

HELYAR  
against  
TRIST.

threatened to bring an action, or that he had refused to discover the quantity of the tithes so set out.

The cause  
heard.

The plaintiffs replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel and reading several depositions; the leases; a receipt for the fine paid; and on full debate of the matter;

An issue directed to try the custom.

The court ordered a trial at law to try the said custom.

The defendant admits the custom.

The defendants submitted to the custom insisted on by the bill, and declined the trial of the action.

On the twenty-third of *February* 1768, the cause came on for further direction, when, upon hearing counsel for the parties and reading the decree,

The custom established;

THE COURT ordered the custom or *modus* insisted on by the bill, viz. "That for time immemorial it has been customary for all the farmers and occupiers of lands in *Harburton* and *Howell*, in the said bill mentioned, to give verbal notice to the owner or occupier of the tithes for the time being, or his proctor, who, or one of them, always resided at *Harburton* during the tithing season in every year, to attend and see the corn justly tithed and set out, previous to the setting out such tithes and housing the corn," to be established, ratified, and confirmed; and that the defendants do, for the time to come, duly observe and perform the same.

and the defendant ordered to pay the value of the tithes he had so set out.

THE COURT further ordered *Newland* to pay one pound two shillings for the tithes of the corn mentioned to have been set out by him without giving such notice as aforesaid; and referred it to the deputy remembrancer to tax the plaintiffs their costs at law and in this court.

TRIN. TERM,  
6. GEO. 3.

WILLIAMS against BARON.

*Cornwall*, 25th June 1766.

The rector of *Saint Ewe*, in *Cornwall*, claims the tithe of the clear gains got by any person using any craft and residing in the parish; and particularly the tenth part of the clear gain made by any inhabitant from his having been employed in the pilchard fishery, by the *Master Seynors*, in the parish of *Mevagiffy*, in the said county.

THE bill stated, that the plaintiff was presented to the rectory of *Saint Ewe*, in the county of *Cornwall*, fifteen years ago; that he had ever since been rector thereof, and was thereby entitled to the tithes of the said parish, and more particularly to all those personal tithes which had been accustomedly paid to his predecessors by all persons using any craft whereby they got gain, and resting with their families in the

parish;

WILLIAMS  
against  
BARON.

parish; that there were near the parish of *Saint Ewe* several fishing towns and coves, from whence a great many boats and vessels were employed in the pilchard fishery; that the said fishery was carried on to great advantage on that part of the English coast, from the month of *July* to the month of *December* yearly; that the undertakers of the said fishery are called *Master Seynors*; that they or their agents, who generally reside in fishing towns and coves, had been used to hire several persons to work in the said fishery; that some of them were parishioners residing in the said fishing towns and coves; that others of them were parishioners residing with their families in several other parishes adjacent thereto; that the said *Master Seynors*, or their agent there, used to pay each of them, for their work in the said fishery, such sums of money as they should mutually agree for, and to allow them, over and above the same, one half of the fish which should be caught during the season; that the several *Master Seynors*, at the proper season of the said fishery, had been accustomed to hire several of the parishioners of *Saint Ewe* (who with their families were resident there) to work for them in the said fishery, and to manage the boats and nets, and to allow them for such their service the particular sums agreed to be paid to each of them in money, and their proportionate share of the moiety of the fish caught in the season, or an allowance in money for the same; that such persons had, after deducting their charges and expences, thereby reaped considerable clear yearly gains; that in the said parish of *Saint Ewe*, such of the inhabitants thereof who had been so hired to work in the said fishery, had always paid, and of right ought to pay, by custom observed for time beyond memory or otherwise, to the rector of *Saint Ewe*, the tithe of such their earnings, and had duly accounted with him for the same; that from the time he had been inducted into the rectory, he had constantly received from such of his parishioners as were hired to work in the said fishery, one full tenth part of all the clear money got and earned by them respectively in each season once in the year, to wit, on *Christmas Day*, or within one month after, until the year 1755, as, and for and in lieu of the tithes of their gains thereby; that since that time the defendant *Maynes* and others, who were all inhabitants residing with their families in *Saint Ewe*, had been severally hired by the defendant *Dunn* and others, all of *Mevagissey*, and *Master Seynors*, to go on board their fishing vessels and work in the said fishery, and were by agreement to be paid several sums of money respectively, and to receive several quantities of fish, or an allowance in money for the same; that in consequence thereof they went on board the said vessels, and in the several seasons of the pilchard fishery in the said years, worked in the said fishery, and thereby earned several sums of money and quantities of fish, which, in consequence of the said agreement, were paid, delivered, or accounted for to them, whereby



WILLIAMS  
against  
Baron.

they had made considerable gains, the tenth part of which ought, by virtue of the said custom or otherwise, to have been paid to the plaintiff, as rector of *Saint Ewe*, for his tithe of their said clear earnings and gains; that he had applied to them severally for a discovery of the *quantum* of their clear earnings and gains, and to be satisfied for the tenth part thereof; but that they had refused the same under various pretences. The bill therefore prayed, that the defendants might be compelled to come to an account with the plaintiff for the tithes in each of the said years; and that they and the defendant *Baron* might pay to the plaintiff the full amount of the said tithes so withheld from him.

The defendant, the vicar of *Mevagiffey*, says, that it is customary for the men employed to have a portion of the fish caught; and that as the same are brought into the parish of *Mevagiffey*, he is entitled to the tenth part thereof, as well from the shares of those men who inhabit *Mevagiffey* as from the shares of those who are hired out of other parishes.

The defendant *Baron* admitted, that the plaintiff was rector of *Saint Ewe*; that within four miles of the southern confines of *Saint Ewe*, no part of which extended to the sea shore, as he believed, there were several fishing towns and coves, from whence vessels were yearly employed in the pilchard fishery; that the undertakers of the said fishery hired, not only persons resident in the said fishing towns, but also other persons from neighbouring parishes, to work for them in the fishery; that the usual terms were, that the owners of the nets, boats, and other craft, should have one half of the fish caught, and the men so hired the other half; but that as the men seldom had proper necessaries for curing their share of the fish, the same had been generally paid by the craft owners, who accounted with and paid the men one half of what such share sold for when cured. The defendant further said, that he had been vicar of *Mevagiffey* ever since the month of *July* 1755, and he insisted that he was, as such, entitled to tithes in kind of all fish caught in the sea and brought into and landed within the said parish by nets, boats, and other craft, which, in the intervals of the fishing season, were housed and kept in the said parish; but that as the receiving of such tithe fish in kind must be attended with great trouble, a composition in money had been generally made and paid for the said tithe in manner following, *viz.* one pound, thirteen shillings, and fourpence for each seyne used therein, in lieu of the tithes of the craft owners' moiety of the pilchards caught, and in lieu of the tithes of the men's moiety one penny out of every shilling the said moiety was sold for, after deducting the incidental expences. He further said, that at *Mevagiffey* the labouring part of the fishery had for many years past been chiefly done by the inhabitants there, but that when there were not sufficient men, the *Master Seyners* hired other men from the adjacent parishes, at such wages and on such terms as were mutually agreed on, but that it was generally known and understood by such strangers so hired, that the vicar of *Mevagiffey* was to be paid his tithes in kind, or the composition in lieu thereof. He further said, that he believed that it had been sometimes agreed that the men were to be paid their wages

WILLIAMS  
against  
BARON.

wages in money only, and at other times part in money and a greater or less share of fish, according to their skill or ability; that in the first case the craft owners had paid the vicar one penny out of every shilling for which one half of the fresh or one quarter of the cured pilchards sold for; and that in the last case the craft owners and the men had contributed proportionably towards making up and paying to the vicar one penny out of every shilling, which half of the fresh or one fourth of the cured pilchards sold for. He further said, that he believed that the vicar of *Mevagissey* had never received or claimed, nor did he claim any thing for the tithe of the men's wages paid in money, but that such wages had been and were duly paid, without any deduction; and that if the tithe of such wages was due to the plaintiff, it was a different tithe from that claimed by and paid to the said defendant; and he said, that in his apprehension it was totally immaterial to him whether such tithe was due to the plaintiff or not, he, the said defendant, having received nothing but what he was entitled to by the custom of *Mevagissey*, established by a decree of this court, or by virtue of such composition entered into in consequence thereof. He further said, that he knew nothing of the men who were hired to labour in the pilchard fishery, he wholly relying on his composition in money in lieu of tithe fish which was retained by the craft owners, and by them paid to him at the end of every fishing season, or so soon after as the accounts could be made up. He said, that he did not know whether any of the men employed in the said fishery were the plaintiff's parishioners or not, nor whether the inhabitants of *Saint Ewe* had paid or ought to pay to him the tithe in the bill mentioned; nor did he know that any of the persons in the bill named had been hired in the pilchard fishery, or how or what they were to be paid for the same; or whether the tithe of their earnings ought to have been paid to the plaintiff, or whether the same amounted to, &c.; but he insisted, that he had a right to receive all such money as had come to his hands for composition for the tithe of pilchards caught and brought into *Mevagissey*; and that he was not indebted to the plaintiff for any money received by him for or on account of the said tithe fish, but that he had a right to receive the same to his own use. He further said, that he believed that the undertakers in the pilchard fishery were owners of the nets, boats, and other craft for taking pilchards; that the *Master Seynors* are, for their greater skill in fishing allowed by the undertakers greater wages in money; and that they command the other persons who labour in the fishery. He also said, that he did not know whether the undertakers or their agents deducted from the wages in money, or from the money allowed to the men for their share of the fish, being parishioners of *Saint Ewe*, the tenth or any other part of their gains, and paid them only nine tenths or any other part, under pretence that

WILLIAMS  
against  
BARON.

they had already paid the tenth part to him the defendant. He also said, that he disclaimed any right to tithe from that part of the gains of the persons employed in the fishery which consisted of money stipulated to be paid to them by the undertakers for their work and skill in the fishery. He insisted, that the vicars of *Mevagissey*, time out of mind, had been, and that he, as vicar, then was well entitled to the tithe in kind of all fish caught in the sea, brought to and landed in the parish by any person whatever, with nets, boats, and other craft, which, in the intervals of the fishing season, were housed and kept there, or to a satisfaction in lieu thereof; but he said, that he did not claim any other personal tithe from the parishioners of any other parish in respect of such fish, or of any gain made by them thereby.

The defendant  
*Smith*, as Master  
Seyner, denies  
that the plaintiff  
is by any custom  
entitled to the  
tithes he claims.

The defendant *Smith* admitted, that the plaintiff was rector of *Saint Ewe*, but denied that he was, to his knowledge, entitled to tithes arising from the labour of his parishioners employed in the pilchard fishery at *Mevagissey*; and he said that he believed that he was not by custom so entitled, for that he yearly received offerings from them, which were paid, as he was informed, in lieu of personal tithes. The defendant spoke as to the custom of tithing the fish, and admitted, that, in the year 1760, he was master of a feyne at *Mevagissey*; that two other of the defendants were hired to work the boats belonging thereto; and that the payments were made according to the custom set forth in the other defendants answers.

The other de-  
fendants, who  
were the men  
hired, say the  
plaintiff is en-  
titled to the said  
tithes.

The other defendants, *Mayne* and others, being servants, put in their answers to the same effect as before mentioned, but hoped that they should not be obliged to pay tithe for the same thing both to the plaintiff and the defendant *Baron*; but they said, that they believed that the same belonged to the plaintiff as his right.

The evidence  
read.

The plaintiff replied to the answers of *Baron* and *Smith*; they rejoined; and witnesses were examined on both sides; and upon hearing counsel for all parties on the second instant, and reading the answer of *Mayne* and others; an order made in this cause dated the twenty-eighth of *November* last, whereby the plaintiff was at liberty to examine *Mayne* and others, and to read their depositions at the hearing, saving just exceptions to the defendants *Baron* and *Smith*; the deposition of the defendant *R. Mayne*, who had been examined pursuant to the said order; the depositions of the other defendants; several depositions of other witnesses taken in the said cause; and upon hearing counsel for defendant *Baron*, and on reading a decretal order of this court, dated the fourth day of *July* 1717, between *Wooldridge*, then vicar of *Mevagissey*, plaintiff, and *Hanna* and others, parishioners of the said parish, defend-  
ants;



ants (a); and after an objection had been taken to such reading thereof, and over-ruled by the court; and reading the depositions of several witnesses; the further consideration of this cause was adjourned over to the ninth instant, when the Barons declared they would give their opinion on a future day; and now, upon further debate of the matter;

WILLIAMS  
against  
BARON.

THE COURT ordered the bill, as against *J. Smith*, to be dismissed with costs, and as to *Baron, Mayne, Johns, Penever*, and *Williams*, to be retained for a year, with liberty for an action at law to be brought in the mean time against the defendant *J. Baron*, either in the name of *Richard Mayne, Richard Johns, Richard Penever, John Williams*, or any other person inhabiting with his family in the parish of *Saint Ewe*, who had paid any money for tithes to *Baron* for money had and received to the use of the plaintiff in such action. The consideration of costs and further directions to be reserved.

The bill dismissed as to *Smith*, the Master *Seyner*, but retained for a year as to the other defendants.

On the eighth of *July 1767*, the defendant's counsel informed the court that the plaintiff had brought no such action, and that the said time allowed for bringing the same was expired; and therefore prayed, that the said bill might be dismissed out of this court, with costs to be taxed for the defendants (except the said defendant *Smith*); whereupon, and on hearing counsel for the plaintiff,

THE COURT ordered, that the said bill be retained in court until *Michaelmas* term next, the said plaintiff undertaking to try the action by him lately brought at the next assizes.

#### KYNASTON against HAWLEY.

*Middlesex, 30th June 1766.*

TRIN. TERM,  
6. GEO. 3.

THE bill stated, that the plaintiff's father had been, for thirty years past, seised in fee simple, or of some other good estate of inheritance; and that the plaintiff was, by virtue of indentures of lease and release, dated the thirty-first of *July* and the first of *August 1760*, and of a fine levied in pursuance thereof, seised in fee or of some good estate of inheritance of all the rectory impropriate of the parish of *Saint Botolph without Aldgate*, some part whereof was in the city of *London* and the liberties thereof, and the other part thereof in the suburbs of the said city, in the county of *Middlesex*; that the plaintiff's said father, being so seised of the said rectory, did, by his deed poll, dated the twenty-eighth of *October 1761*, grant to the plaintiff all tithes, tenths, rates, compositions, customary payments, or other duties, in lieu of tithes or tenths issuing and payable out of or for all houses, outhouses, buildings, warehouscs, shops, sheds, cellars, wharfs, stables, grounds, and other hereditaments belonging to the said rectory,

The Catherine Wheel Brew-house, near the Hermitage, in Lower East Smithfield, in the county of *Middlesex*, pays 3l. a year to the impropriator of *Saint Botolph without Aldgate*, as a prescriptive payment, in lieu of the tithes of the said premises.

(a) See Vol. ii. page 50.

KYNASTON  
against  
HAWLEY.

and which were due and in arrear on or before the fifth of July 1760, old style; that the plaintiff, as impropiator of the said rectory, and as assignee under the said deed, was entitled to receive all manner of tithes and sums of money anciently paid as *modus*es for tithes, or as compositions in lieu of tithes, and all prescriptive payments in the name of tithes, and all other dues and profits to the said rectory and parish church and the impropriation thereof belonging and payable by the inhabitants, owners, occupiers, and possessors of any houses, &c. within the said parish, and the precincts, limits, and titheable places thereof, within the time aforesaid, as well in such parts of the said parish as were within the city of *London* and the liberties thereof, as in such parts thereof as were in the said parish and suburbs of the said city in the county of *Middlesex*; that the defendant, for several years past, had been an inhabitant and occupier of one dwelling house and brewhouse, with the buildings and appurtenances, situate in *Lower East Smithfield*, near *the Hermitage*, within that part of the parish which lies in *Middlesex*; that all former inhabitants or occupiers of the said house, &c. had, from time to time, immemorially paid three pounds yearly for the tithes of the said house, &c. or as an ancient composition made for the tithes of the land on which the said house, &c. were erected, by yearly, half yearly, or quarterly payments; that he, the plaintiff, had applied to the defendant and requested him to pay him the arrear which was due for his prescriptive payment, in lieu of the tithes of the said house, &c.; but that, under some frivolous pretence, he had refused so to do. The bill therefore prayed, that the defendant might, by the decree of this court, be compelled to account with the plaintiff for all arrears of such sums of money, in lieu of or in the name of tithes, which had accrued due, for or in respect of the premises whilst the defendant had held or occupied the same, and might pay and satisfy the plaintiff what should appear to be due and owing to him on such account.

The defendant said, that the plaintiff's father might, for any thing he knew to the contrary, have been seised in fee, for thirty years of the rectory impropriate of *Saint Botolph without Aldgate*, and that he might execute the said deed to his son of the tithes, &c. of the said rectory; and he admitted that he had, for eight years past, been an inhabitant and occupier of a dwelling-house and *the Catherine Wheel Brewhouse*, with the appurtenances, in *Lower East Smithfield*, near *the Hermitage*, as stated in the bill; but he insisted, that the land on which the house, &c. stood, was parcel of the lands belonging to the abbey of *Saint Mary of Grays*, near the *TOWER* of *London*; that the abbot and convent of the said abbey were of the *Cistercian* order; that the said abbot and convent were, at the dissolution of the abbey, seised in fee of the said

said land, and that the abbot and his farmer, or tenant thereof, were therefore exempted from the payment of any tithes or any composition in lieu thereof; that the abbey was dissolved by the 31. *Hen.* 8. and that his majesty became seised in fee of the said premises by virtue of the said act; that *Henry the Eighth* granted the said premises to *Sir A. Darcy*, knight, in fee, exempt from tithes, and that by several subsequent conveyances the said lands became vested in *J. Goodman*, deceased, in fee; that since his decease his brother, *W. Goodman*, became seised thereof in fee; that *W. Goodman*, being so seised, by indenture dated the thirtieth of *January* 1762, granted to the defendant, &c. the said dwelling-house, &c. to hold for sixty-one years; and that by virtue thereof he now enjoyed the same. He said, that he had not paid any tithes, or any thing in lieu thereof, during the time he had been in possession of it; but he admitted, that he had been applied to to pay to the plaintiff the arrears of a pretended prescriptive payment in lieu of tithes for the said premises, and that he had refused to pay the same; but he said, that he believed that the said three pounds a year had been paid by the former occupiers, and, contending that they had paid it in their own wrong, hoped it would not be binding upon him, as he claimed the said exemption.

KYNASTON  
against  
HAWLEY.

The plaintiff replied; the defendants rejoined; and several witnesses were examined on both sides; and upon hearing counsel; and on reading an indenture, dated the twelfth of *June* 1728, signed *J. Raymond* and others; a lease and release, dated the thirty-first of *July* and the first of *August* 1760, signed *T. Kynaston* and others; an indenture of fine of the rectory of *Saint Botolph, Aldgate*, in *Michaelmas* term 1760; an assignment of the arrears of the tithes of the said parish, dated the twenty-eighth of *October* 1761, signed *T. Kynaston*; two decrees of this court made in *Easter* term, the seventh of *May*, and *Trinity* term, the fifth of *July*, in the sixth year of *William and Mary*, between *Umfreville* and *Topping* (a); a decree of this court of the twenty-sixth of *November* in the same year, in the cause of *Umfreville* against *Campion* (b); a decree of this court, of the twenty-eighth of *May* 1761, in the case of *Kynaston* against *Hattersley* (c); copy of letters patent, dated the twentieth of *March*, in the twenty-fourth year of *Edward the Third*, and the twenty-eighth of *June*, in the twenty-fifth year of the said king; four accounts of several depositions in the cause; and on debate of the matter;

THE COURT ordered the defendant to account with the plaintiff for the tithes of the premises occupied by him in the said parish, at the rate of three pounds by the year, during the time of his possession and occupation thereof, as in the pleadings of this cause mentioned, with costs. The deputy remem-

(a) Vol. i. page 326. (b) Vol. i. page 329. (c) Ante, page 9.  
brancer



KYNASTON  
against  
HAWLEY.

brancer made his report, dated the twenty-fourth; and on the twenty-sixth of February 1767 the said report was confirmed, and the defendant ordered to pay to the plaintiff one hundred pounds, three shillings, and tenpence, reported due to him for his tithes and costs, viz. for the tithes for seven years and three quarters, at three pounds *per annum*, twenty-three pounds, five shillings; costs, seventy-six pounds, eighteen shillings, and tenpence; in all, one hundred pounds, three shillings, and tenpence.

TRIN. TERM,  
6. GEO. 3.

DOCKWRAY against RIDDELL.

Northumberland, 1st July 1766.

The vicar of *Stamfordham*, in *Northumberland*, is only entitled to a *modus* of 3s. 4d. at Easter yearly, in lieu of the tithe hay arising in the manor of *Cheesburn Grange*, in the said parish; and to the same *modus* respectively for the tithe hay arising in the townships of *Nesbit* and *Ouston*.

THE bill stated, that the plaintiff was, and ever since the second of January 1762 had been, vicar of *Stamfordham*, in the county of *Northumberland*, and as such was legally entitled to all the tithes, &c. belonging to the vicarage, particularly to the tithe of hay within the townships, hamlets, or territories, of *Cheesburn Grange*, *Nesbit*, *Ouston*, *Ingoe Ryal*, otherwise *Ryebill*, *Hearsley*, *East Bitchfield*, *West Bitchfield*, and *Black Heddon*, within the said parish; that the defendant *Riddell*, for two years past, had been an occupier of meadow ground within the township of *Cheesburn Grainge*, from whence he had in each year quantities of hay; that the defendant *Pattison* had also been an occupier of meadow ground within the township of *Nesbit*, from whence she had hay; that the defendant *Dunn* had also occupied lands in the township of *Ouston*, from whence he had yearly great quantities of hay; that he had requested of them respectively to set out their tithes of hay in kind to him as vicar of the said parish; but that they had refused so to do, under the pretence that they were exempted from the payment of tithe hay. The bill therefore prayed, that the defendant the *Bishop of Durham* might answer so much of the bill as materially concerned him, and particularly whether, in right of his bishoprick or otherwise, he claimed to be entitled to the tithes of hay within any part of the parish of *Stamfordham*; and that the other defendants might severally come to an account with, and make the plaintiff a satisfaction for the tithes of the hay of their several lands and grounds within the said several townships so withheld from him as aforesaid.

The defendants *Riddell*, *Pattison*, and *Dunn*, denied the plaintiff's title to the tithe of hay in kind within the said townships; but said, that he ought to receive the following *moduses* in satisfaction of tithe hay within the several hamlets of *Cheesburn Grange*, *Nesbit*, and *Ouston*.

The defendant *Riddell* said, that he was seised of the manors of *Cheesburn Grange*, *Nesbit*, and *Ouston*, and the several lands and grounds thereto belonging; and that the same were in the possession of himself and his tenants, of whom the defendants

*Pattison*

*Pattison* and *Dunn* were two; that a certain *modus* of three shillings and fourpence yearly was now, and had been immemorially due and payable at *Easter* yearly, or as soon after as demanded, to the vicar of *Stamfordham*, or his lessee or lessees, for and in lieu and satisfaction of all tithes of hay yearly growing within the manor of *Cheesburn Grange*; and the like *modus* for tithe hay in the manor of *Nesbit*; and also in the manor of *Ouston*; that he had offered to satisfy the plaintiff, and pay him the arrears of all and the future growing payments of the said respective *moduses*; but that he absolutely refused to accept the same.

DOCKWRAV  
against  
RIDDLELL.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel; and reading the several proofs in the cause;

THE COURT ordered the bill to be dismissed with costs.

T. PARKER.  
S. S. SMYTHE,  
RICH. ADAMS.

BICKHAM against LANGDALE; et à Contra.

TRIN. TERM,  
6. GEO. 3.

Leicestershire, 1st July 1766.

THE bill stated, that the plaintiff was, in the month of *October* 1761, duly presented to the rectory of *Loughborough*, in the county of *Leicestershire*, and thereby had become entitled to the great and small tithes of the parish; that the defendants had, during the last three years, held and occupied the *Parks* or the *Park Closes* and *Widenbrook Closes*, and had wheat, barley, pease, beans, oats, and hay, growing thereon; that they had also fed and depastured barren and unprofitable cattle thereon, the tithes of which they had yearly converted to their own use, without making him any satisfaction for the same. The bill also charged, that the defendants, during the said time, had severally held and enjoyed other lands in the parish, and had other titheable matters yearly growing thereon, and particularly that they had fed and depastured divers sheep, which had dropped lambs and produced wool. It also charged, that they had had on the said lands turnips, which they had gathered, and also great quantities of pigeons, pigs, bees, milk, and fruit, the tithes of which they had refused to pay. The bill therefore prayed, that the defendant *Langdale* and others might be decreed to account with the plaintiff for the tithes so subtracted by them respectively as aforesaid; that what should be due from *J. Soars* might be paid out of the assets come to the hands of the defendant *E. Soars*; that she might admit assets for the purpose, or account for the same; and that the plaintiff's right to the tithes of the said lands might be established as against the owners thereof.

The rector of *Loughborough*, in *Leicestershire*, is entitled to the great and small tithes of *Loughborough Parks* and *Widenbrook Closes*, in kind.

The

BICKHAM  
against  
LANGDALE;  
et à Contra.

The defendants admitted, that they were owners and occupiers of the lands in the bill mentioned; that the lands lay in the parish; that the plaintiff was rector thereof; and that he was entitled to all such great and small tithes as were due and payable to the rector; but they insisted, that no tithes whatsoever were, or had been, since the plaintiff became rector, payable for any of the said lands; for that the lands called *Loughborough Parks* were formerly part of the inheritance of THE CROWN OF ENGLAND, and the ancient possessions of the crown; that *Queen Elizabeth*, or some king of *England* her predecessor, was seised, in right of THE CROWN OF ENGLAND, of *Loughborough Park* lands; that he or she, and all his or her predecessors kings of *England*, had held and enjoyed the said lands, from time whereof the memory of man was not to the contrary, for him or herself, and his or her tenants, exonerated, privileged, and acquitted of and from the payment of any manner of tithes for or in respect of the said lands; that the said lands were granted by the crown to a former *Earl of Huntingdon* and his heirs, at a certain rent, to be held of the crown; that the defendants *Watkinson*, *Oldersbarrow*, and *Boyer*, claimed the same by mesne conveyances from and under such grant; and that, by virtue of such prescription in the crown, they were entitled to hold the said lands in like manner exonerated, acquitted, and privileged from the payment of any tithes in respect thereof. They said, that they believed, that in the year 1703 a commission had issued under the seal of the *Bishop of Lincoln* to the minister, churchwardens, and inhabitants of the parish of *Loughborough*, which is in the diocese of *Lincoln*, to make a survey of the rights and customs belonging to the rectory; that such survey was made accordingly, and returned into the bishop's registry; and that, amongst other things contained in the said survey, are the following particulars, TO WIT, "An Account of all Rights and Customs belonging to the Rectory of *Loughborough*.—ITEM, It is a rectory in which all manner of tithes are due in kind, except all those grounds called *Loughborough Parks* paying nothing; and all those grounds called *the Outwoods* paying nothing; and all those grounds called *Burleigh Parks* paying yearly two shillings; and all that ground called *Radmore*, one half in the possession of *Miles Newton*, and the other half in the inheritance of the *Earl of Huntingdon*, paying each of them yearly one shilling;" and they insisted, that agreeable to the said survey, the lands therein mentioned as not liable to the payment of tithes had not, within the memory of man, paid tithes in kind, nor did they believe that tithes, or a composition for tithes, had ever been paid for *Loughborough Parks*; but that in case the said lands had ever been titheable, they further insisted, that they were exempted from the payment of tithes by composition real, or some other lawful mode of discharge, and particularly *the Park Closes*, which formerly



formerly belonged to the family of the *Earl of Huntingdon*; that the said family were also owners of the advowson of the rectory, which they gave to *Emmanuel College*, in *Cambridge*; that they endowed the said rectory with a considerable tract of land, which was still enjoyed by the rector of the parish for the time being; that in consideration of such endowment, and by the instrument of the said endowment, the said lands were either exempted from the payment of tithes, or were granted upon condition that no tithes should be demanded for the said closes called *the Park Closes*.

BICKHAM  
against  
LANGDALE;  
et c. Contra.

The defendants *Watkinson* and others said, that, except the lands called *the Parks*, or *the Park Closes*, and the lands called *Widenbrook Closes*, they did not, in the said three years, hold or occupy any other lands in the parish, save that during the said years the defendants *Watkinson* and *Boyer*, and each of them, held and occupied two gardens, and the defendant *Farrow* one garden, in the said town; and that for those held by the defendants *Watkinson* and *Boyer* there had been respectively a money compensation or rate paid to the plaintiff as rector; but that nothing had been paid for the garden held by *Farrow*, the fruits and produce thereof being so extremely small; and also save that the defendants *Langdale* and others during the said time had severally held and occupied certain pieces of land, parcel of the then late open fields in the parish; and that the said lands, by virtue of an act of parliament made and passed for inclosing the said fields, were, during the said three years, and for ever after, exempt and discharged from the payment of tithes: and they set forth the several other lands they held; the several titheable matters they had thereon, and the values thereof; and the defendant *Soars* admitted assets of her late husband.

The defendant *Watkinson* and others filed a *cross bill* against the rector, and the master, fellows, and scholars of *Emmanuel College*, in *Cambridge*, setting forth, that they were owners and occupiers of several parcels of land in the parish, which, together with several other parcels of land of which other persons were owners, were, and had been for time immemorial, called *Loughborough Parks*; that the *Earls of Huntingdon* were formerly owners of the said parcels of land used as a park, and were formerly patrons of the rectory of the parish and parish church of *Loughborough*; that before the *Earls of Huntingdon* were owners of the said lands, they were part of the inheritance of THE CROWN; and that *Queen Elizabeth*, and all her predecessors kings of *England*, held and enjoyed the said lands, from time whereof the memory of man was not to the contrary, for herself and her tenants, exonerated, acquitted, and privileged of and from the payment of any manner of tithes in respect thereof; that the said queen being so seised, granted the said lands to the *Earl of Huntingdon* and his heirs, to hold to him and his heirs

at

BICKHAM  
against  
LANGDALE;  
et c. Contra.

at a certain rent from her majesty as of her manor of *East Greenwich*; that the plaintiff *Watkinson* and others then held the said lands by virtue of mesne conveyances from the *Earl of Huntingdon*, and by virtue of such prescription were entitled to hold the said lands exonerated, &c. from the payment of any tithes; that tithes had never been paid to, or claimed by, the rectors of the said parish in respect of the said lands; that in 1703 a commission issued under the seal of the *Bishop of Lincoln*, directed to the minister, churchwardens, and inhabitants of the said parish of *Loughborough*, to make a survey of the rights and customs belonging to the said rectory; and that such survey was made accordingly; that another survey or terrier of the said rectory was made in 1748, and then in the bishop's registry; that amongst other things contained therein were the following particulars, "An Account of the Rights and Customs belonging to the Rectory of *Loughborough*.—It is a rectory in which all manner of tithes are due in kind, except all those grounds called *Loughborough Parks* paying nothing;" that the manner of tithing mentioned in the said terriers had always been complied with on those lands within the said parish where tithes were payable; and that the *modus* of two shillings had always been paid for *Burleigh Parks*, and the defendant the rector had received the same accordingly; that there were within the said parish of *Loughborough* certain ancient customs and modes of tithing particular things, which had been used for time immemorial therein, that is to say, in lieu of the tithes of colts, twopence; and of milk and the tithe of calves, for every cow and calf, three halfpence; and of the milk of the cow which had no calf that year, one penny; that wheat, rye, and all sorts of corn which were shorn, were titheable in the shock, and that the incumbent paid for the shocking eightpence for every yard land. They insisted, that the defendants had in their custody or power several terriers, containing an account of the revenues of the rectory, wherein it was expressly declared, that the said lands were not subject to the payment of tithes; and also several books, papers, and writings, which belonged to the former rectors of the said parish, whereby the same appeared; that they also had a deed of gift and conveyance, whereby the advowson thereof was conveyed to them by some *Earl of Huntingdon*; and that it thereby appeared, that that family were patrons of the said rectory; that they had other grants likewise in their custody made by some king or queen of *England*, whereby it appeared, that the said lands and the advowson thereof did belong to the crown; but that they refused to produce the said several deeds, evidences, and writings, or to admit such custom of tithing. The *crefs bill* therefore prayed, that a perpetual injunction might be awarded to restrain the defendant *J. Bickham* from taking or demanding any tithes for or in respect of the lands called *Loughborough Parks*,  
belonging

belonging to the plaintiffs ; and that the said customs of tithing might be established by the decree of the court.

BICKHAM  
against  
LANGDALE ;  
et c. Contra.

The rector *Bickham* admitted, that the plaintiffs were owners and occupiers of divers parcels of land, which, with certain other parcels of lands had, for time immemorial, been called *Loughborough Parks* : and that the lands which *Boyer* was owner of, and *Taylor* and *Farrow* were occupiers of, were called *the Parks* or *Widenbrook Closes* ; but he denied that he knew whether the *Earls of Huntingdon* were formerly owners of the said lands, or that the said lands did ever belong to, or were part of the inheritance of THE CROWN OF ENGLAND ; or that *Queen Elizabeth*, being seised of the freehold and inheritance of *Loughborough Park* lands, did grant the same to the *Earl of Huntingdon* and his heirs at a certain rent, to be held for her majesty as of her manor of *East Greenwich* ; or that she or her predecessors, or the said plaintiffs, or any of them, by virtue of any prescription in the crown, were entitled to hold and enjoy the said lands exonerated from the payment of tithes ; or that there ever was any prescription in the crown in respect thereof. The rector also said, that he had never heard, and that he did not believe that any tithes had ever been paid for the said lands ; but he insisted, that it did not therefore follow that no tithes were due or payable for the same. He denied, that such tithes had never been claimed by the rectors of *Loughborough*, and insisted that his predecessors had claimed the same ; and said that a payment of two shillings was offered in the respect of the lands called *Burleigh Parks*, and refused ; and he insisted on tithes in kind. He said, that he believed that in the year 1703 a commission did issue to make a survey of the rights and customs belonging to the said rectory ; and that such survey was made and returned ; but he denied, that the particulars in the bill mentioned were contained therein, or that any manner of tithing was mentioned in the said survey, no such being contained in the office copy thereof obtained by him ; and therefore he insisted, that the manner of tithing observed in the said parish could not have been according to such survey. He denied, that he knew or believed that two shillings had yearly been paid in lieu of the tithes of *Burleigh Parks* ; but said, that he believed his predecessors had accepted the same for and in lieu of the tithes of *Radmoor*. He insisted, that the tithes for *Loughborough Park* were due to him of *common right*, as rector of the parish ; that the mere non-payment of tithes was no exemption from the payment thereof ; and that the plaintiffs could not prescribe generally *in non decimando* for their said lands ; but that in case the same were exempted, they ought to prove the same. He set forth an extract taken by him from a terrier in the registry at *Leicester* in 1724, subscribed by *J. Alleyne*, rector, the churchwardens,



BICKHAM  
against  
LANGDALE;  
et à Contra.

churchwardens, sidesmen, and others, which contained these words: "An Account of all the Rights and Customs belonging to the Rectory of *Loughborough*.—It is a rectory in which all manner of tithes are due in kind;" without any exceptions of *Loughborough Parks*, *Burleigh Parks*, *the Outwoods*, or *Radmoor*, either in the said extract or the said terrier: and he set forth the purport of the four terriers which he had in his possession, and left the same for the plaintiffs inspection; but he said, that he did not know by what authority the same were taken; and he submitted how far they should influence or determine his right to the tithes of *Loughborough Parks*; and hoped the Court would not interfere by way of injunction to restrain him from taking or demanding the said tithes.

The College admitted, that they were patrons of the rectory, and that the advowson thereof had been heretofore given them by some *Earl of Huntingdon*; and said, that they believed *Loughborough Parks* were titheable. They denied that they had in their custody any deeds, &c. save an indenture dated the nineteenth of *January*, in the twenty-eighth year of *Queen Elizabeth*, purporting to be a grant from the *Earl of Huntingdon* to *Sir F. Mildway* and *F. Hastings* and their heirs of the advowson and patronage of the rectory, in trust for the use of the *Earl* during his life, and after his decease to the *College*; and also a paper-writing purporting to be an examined extract of a grant dated the twenty-sixth of *November*, in the eighteenth year of *Queen Elizabeth*, of the said advowson, as parcel of the possessions of *Henry, Duke of Suffolk* (attainted of high treason), to the said *Earl of Huntingdon*; and they averred, that there was not anything in the said indenture relative to the lands not being titheable. They also denied, that they had in their custody or power any grant made by any king or queen of *England*, whereby it appeared, that the said lands, or the advowson thereof, belonged to the crown. They admitted, that it might be true that the said rectory was endowed by some *Earl of Huntingdon*; but said, that they knew nothing thereof.

The rector *Bickham* further admitted, that such terrier of the rectory had been made in the year 1748; but said, that the same had never been returned into the bishop's registry. He also admitted, that there were within the parish certain ancient customs and modes of tithing particular things within such parts of the said parish where tithes had usually been paid, for ought he knew, for time immemorial, in lieu of the tithes of colts or foals, twopence for each colt or foal; in lieu of the tithe of milk or calves, for every cow and calf three halfpence, and one penny for a cow that gives milk and hath no calf that year; for *Easter* offerings, wool, or fleeces, lambs, and pigs, according to the terrier; that wheat and rye and all sorts of corn were shorn, and by the said custom titheable in the shock,  
and

and the incumbent paid for the shocking the same in the open fields of *Loughborough* before they were inclosed, eightpence; for every yard land in the hamlet of *Kingthorp*, sixpence; and that in the hamlet of *Woodthorp* nothing was ever paid for shocking, or for broken lands, or for any quantity less than a quarter of a yard land; but he insisted, that the said customs or *modus* did not nor could extend to the land called *Loughborough Parks*, which had never paid tithes as alledged by the plaintiffs. He denied, that he knew that such non-payment of tithes for the said lands proceeded from any legal exemption or ground of discharge; and insisted on his right, as rector of the said parish, to the tithe of the said lands.

BICKHAM  
against  
LANGDALE;  
et c. Contra.

The plaintiffs in both causes replied; the defendants rejoined (except the College); and witnesses were examined on both sides in the original cause; and the causes came on to be heard together pursuant to order; and upon hearing counsel for all parties.

THE COURT ordered the defendant *Langdale* and others (the occupiers) to account with the plaintiff for the value of the tithes of the several titheable matters and things demanded by the original bill, with his costs of suit.

THE COURT further ordered the cross bill to be dismissed with costs.

But by an order made the seventh day of *July* 1767, on the application of *Langdale, &c.* these causes were ordered to be reheard, upon the usual deposit; which being accordingly made, they came on to be reheard on the sixteenth of *November* 1767; and upon hearing counsel for all parties; and reading the petition for re-hearing; and also the decretal order made the first of *July* 1766; the several answers, cross bill, and depositions; and the deposition of *T. Dolly* to prove an instrument called a *survey* or *terrier*, being offered to be read on behalf of the defendants *Langdale*, and objected to by the plaintiff's counsel as not evidence, being a copy, and if an original not properly a *terrier*, being a return to a commission issued by the bishop, and the Court allowing the said objection; and on debate of the matter;

THE COURT ordered the said decree to be affirmed; and the deposit of ten pounds to be paid to *Bickham* or his clerk in court.

MICH. TERM,  
7. GEO. 3.

CARTWRIGHT *against* BAILEY.

Shropshire, 10th December 1766.

The vicar of  
*Wroxeter*, in  
*Shropshire*, is en-  
titled to the tithes  
of clover seed  
and rye grass  
seed.

THE vicar of *Wroxeter*, in the county of *Salop*, claimed the tithes of all grass and hay, clover grass, and clover hay, yearly mowed, or cut down within the township of *Norton* in the said parish.

The defendants admitted, that the plaintiff had been, for many years past, vicar of *Wroxeter*; that the township of *Norton* lay therein; that the vicars for the time being were entitled to all the small tithes thereof, and to the tithes of grass, hay, clover grass, and clover hay, where the same were respectively cut for fodder, within the said township, except where a *modus* was payable in lieu thereof.

The defendant *Bailey* the elder admitted, that he had, for six years past, occupied a farm in the township of *Norton*, as tenant to *J. Corbett*; that he had, for three years, sowed certain fields of the said farm with rye grass seed, and had carried away all the produce without setting out the tithes thereof, insisting, that as it was cultivated for the purpose of gathering the seed thereof, and used and managed accordingly, and not applied to any purposes as fodder, no tithes thereof were due to the vicar. He also said, that during the said three years he had cut clover, which was also used for seed. But he admitted, that he had, during that time, cut clover and rye grass, and had used the same for the purpose of fodder; but he insisted, that the tithe thereof had been duly set out, and that the plaintiff had carried it away. He also admitted, that the plaintiff did, about six years ago, tithe some rye grass which had been cut upon the said farm, and cured for seed; and that he had carried away the same without leaving the tithe so set out.

The defendant *Bailey* the younger said, that he held a farm in the said township; and put in the like answer.

Both the defendants said, that at the time they took their farms they were, by agreement, to hold the same free and discharged from the payment of such tithes as *J. Corbett*, or those claiming under him, were entitled to; and they hoped, that the tithes of clover seed and rye grass belonged to him, and were not included either in the description of *small tithes*, or in the tithes of grass, hay, clover grass, or clover hay cut for fodder. They admitted, that the plaintiff had applied to them to account for the said tithes, and that they had refused so to do for the reasons aforesaid, and also because the tithe of clover and rye grass cut for seed was esteemed, in several other parishes in the said county, a *great tithe*.

The



The plaintiff replied ; the defendants rejoined ; and witnesses were examined on both sides ; and upon hearing counsel on both sides ; and reading the answer, and the depositions of several witnesses ; and on full debate ;

CARTWRIGHT  
against  
BAILEY.

THE COURT ordered the defendants to account with the plaintiff for the value of the tithes of the clover seed and rye grass seed as demanded by the bill, with costs.

PARKER, *Chief Baron.*  
SMYTHE, *Baron.*  
ADAMS, *Baron.*

HORTON *against* GODDARD.

MICH. TERM.  
7. GEO. 3.

Surry, 12th December 1766.

THE bill stated, that in the month of September 1750 the plaintiff was duly presented to the rectory of *Hafcomb*, in the county of *Surry*, and had thereby become entitled to all the tithes therein ; to twopence from every housekeeper living in the rectory as an oblation, and to twopence, as an *Easter* offering, for every person in the family of such housekeeper who was above the age of sixteen years ; that the defendant *Goddard* occupied in the parish *Lodge Farm* and *Markwith Farm* ; that in the year 1764 he had herbs, fruit, roots, wheat, rye, oats, barley, beans, pease, corn, grain, and grass growing thereon ; that he had depastured thereon cows, which had calves and milk ; that he had several acres of turnips, on which, as well as on the pasture lands, he had depastured sheep, from which he had lambs and wool ; that he had also depastured unprofitable cattle on the said farms ; that he had also cut several acres of clover a second time, and let several acres thereof stand for seed ; that he had several sows, which had litters of pigs ; and that he had also cut and sold quantities of underwood from off the said lands. The bill also stated, that since *Michaelmas* 1763 the defendant *Butcher* had occupied *Parkbatch Farm*, and other lands called *Giles Farm*, on which he had growing, arising, and renewing the several titheable matters and things aforesaid. The bill further stated, that the plaintiff had applied to them to account with him for the said tithes, or pay him the just value thereof, which they had refused to do, pretending, that some *modus* or composition was due for the same. The plaintiff then averred, that he had given public notice at *Michaelmas* 1763 that he would take his tithes in kind ; and insisted, that tithes were either due for the turnips eaten by their sheep, or for the seed and agistment of such sheep ; but that they, in order to defraud him, had driven off the sheep by them respectively fed in the said parish into another parish to have them shorn, and just before the time of their yeanning their lambs had brought them back

The rector of *Hafcomb*, in *Surry*, claims the tithes of wheat, hay, aftermath of clover, clover seed, milk, fruit, poultry, sheep, and agistment, on *Lodge Farm*, *Markwith Farm*, *Parkbatch Farm*, *Giles Farm*, and *Springfield* for the year 1764 ; and says, that he gave notice at *Michaelmas* 1763 that he would take his tithes in kind.

HORTON  
against  
GODDARD.

to be kept and depastured in the said parish ; that the defendant *Goddard*, to defraud him of the tithe of milk, had driven his cows, which he constantly fed in the said parish, out of the said parish to milk them, and had afterwards brought them back into the parish to feed, and had also sold and used the milk in the said parish ; that he had set out his tithe of hay on one part of his farm without any person being present for the plaintiff, and without having given any notice to see the same tithed ; that on another part of the said farms, he did not give the plaintiff any notice till a month after the tithe of his hay had been set out, and the same greatly damaged ; that he had likewise, in the presence of the plaintiff's tithing-man, tithed a crop of wheat in *Gorbridge's Field*, and marked the plaintiff's sheaves by fixing a bough thereon ; that he afterwards took away the sheaves which had been set out for the plaintiff, and left other sheaves, which being without mark, the plaintiff's agent did not venture to take them away ; and that in another field of wheat, after the same had been tithed, he hindered the plaintiff taking his tithe away, and that afterwards some sheaves were missing, and the rest damaged. The bill therefore prayed, that the defendants might be respectively compelled to make a full discovery of all and every the matters aforesaid, and pay the value of all the tithes, *Easter* offerings, or oblations, so subtracted and withheld from the plaintiff.

The defendants  
admit, that he is  
entitled to the  
tithes of corn,  
grain, and hay.

The defendants admitted, that the plaintiff was rector of *Hafcomb*, and entitled to the tithes of corn, grain, and hay ; but whether he was entitled to any other tithes they could not set forth, because, during all their time, the rectors of the said parish, and the plaintiff himself till *Michaelmas* 1763, had frequently taken a sum of money severally of the defendants and other parishioners and occupiers of lands in the said rectory annually, by way of *composition* for all manner of tithes within the said rectory ; that the plaintiff still took *compositions* from some of the inhabitants, although he had given public notice to the contrary : and they insisted, that they had never denied the plaintiff's right to tithes, but had always been ready to set forth or compound with him for the tithes he justly claimed, and could prove to be due to him.

The defendant  
*Goddard* an-  
swers.

The defendant *Goddard* admitted, that he was occupier of *Lodge Farm* and of *Markwick Farm* ; and insisted, that the plaintiff had duly taken away the tithes of all corn, grain, and hay, growing on *Lodge Farm* in the year 1764, and on such part of *Markwick Farm* as was in the parish of *Hafcomb*, except a few cocks of very coarse rushy hay of little value, and a few sheaves of wheat which were set out for tithes, but which the plaintiff refused to take, and left on the lands ; and he submitted to the Court, whether the plaintiff had a right to pull down his stocks

HORTON  
against  
GODDARD.

of wheat to tithe it after the same had been by him fairly and truly done. He admitted, that he had refused to let the plaintiff come into his field, because the tithe waggon was loaded with the tithe of other persons; and he insisted, that the plaintiff had in no ways been injured thereby, as the weather was extremely fine, and the wheat afterwards in a better condition; and he denied, that he had taken away any of the plaintiff's sheaves of corn. He admitted, that in the year 1764 he had kept several cows; but denied that they had ever calved in the parish, or that they had been depastured therein till after the hay harvest; but he admitted, that he had reared one calf in the parish in the year 1764 that he had had by a cow which he fed on the hay of the growth of the year 1763, for the tithe of which he had compounded with the plaintiff. He also said, that he had never milked any cows in the parish till after harvest; and that he had never refused to pay the plaintiff the tithe milk whenever he sent for it. He admitted, that he had in the year 1764 some turnips, which had been fed off by his ewes and lambs; and denied that he had refused to pay the tithes for them; but said, that he had been informed that there was a composition usually paid to the plaintiff for the same. He denied that he had sheep thorn in the parish in the year 1764; but admitted that he had lambs yeaned. He also denied that he had kept on the said premises, during the said year, any unprofitable cattle to be agisted for hire, or that he had any unprofitable cattle of his own, except only the horses, which he had kept for the necessary management of his farms. He admitted, that he had in the said year several acres of clover; and said, that he had cut down green only three acres thereof; that those were for feeding his said horses and cattle; and that he had offered the plaintiff the tithe thereof. He denied, that he had cut down any clover a second time in the year 1764; but admitted, that he had let two acres stand for seed; and said, that the plaintiff's agent had declared that he could not claim tithes for second cut clover or clover seed after having taken the tithe of the first crop. He admitted, that he had in the said year a litter of pigs, in number seven; and said, that the plaintiff's agent had taken the third best pig as the tithe for the seven. He also admitted, that he had some poultry in the said year; and said, that he was ready to pay the tithe thereof: and he denied that he had cut any underwood, save what had been used in repairing the farms, and for firing.

The defendant *Butcher* admitted, that he had for several years past occupied *Parkbatch Farm* and the lands called *Giles Farm*; and said, that the plaintiff had declined accepting any tithes of his gardens for the year 1764, but that he had taken away the tithes of the apples in the orchards belonging to his said farm. He admitted, that he had several acres of turnips, which were sown

The defendant  
*Butcher* answers,



HORTON  
against  
GODDARD.

before the harvest of the year 1763; that he had fed them off by his oxen or cattle before *Lady Day* 1764; that he had compounded with the plaintiff for the tithes of the year 1763; that although, under such circumstances, it was doubtful whether such turnips were titheable, yet he had offered the tithe thereof to the plaintiff, who had declined to fetch the same. He admitted, that he had three lambs yeaned in the parish; and said, that he had offered one of them to the plaintiff, who had refused to accept it. He insisted, that his sheep were shorn out of the parish, but that he had offered him the tithes of their wool, and that he had refused to accept the same. He said, that he did not know whether the plaintiff was entitled to the tithe of clover cut twice in the same summer, when the tithes of the first crop had been duly paid. He admitted, that he had kept cows in the said parish in the year 1764, and said that he had offered the plaintiff the tithe milk thereof, but that he had declined fetching it from his, the defendant's, house, insisting, that the tenth meal thereof should be brought to his, the plaintiff's house, or to the church. He denied that he had kept in the said year any unprofitable cattle for hire, or that he had depastured any cattle on his farms but what were necessary for the management thereof. He admitted, that he had some poultry in the said year; but said, that the plaintiff's agent had refused to accept the tithe thereof, it being very trifling.

Both the defendants admitted, that in the year 1764 they had in their families six persons above the age of sixteen years; but said, that they had never heard that *Easter offerings* had ever been demanded or paid. They denied that they had at any time, to defraud the plaintiff of the tithe of milk, driven their cows out of the parish to milk them, and afterwards brought them back again to feed therein; or that they had brought back the milk to sell or use therein; or that, to defraud the plaintiff of the tithe of wool and lambs, they had driven the sheep by them respectively fed in the said parish into another parish to have them shorn just before yeaning time; and that if they had not set out their tithe duly, it was through ignorance, and not fraud. They admitted, that they had notice of the plaintiff's intention to take his tithes in kind before the beginning of the year 1764.

The defendant *Butcher* admitted, that he had some acres of clover growing on his lands in the year 1764; and that he had mowed the same after his oxen and cattle had fed thereon; and said, that the plaintiff had taken his tithe thereof; and that he afterwards mowed the rowing thereof, and gave the plaintiff notice, who told him, he might do what he would therewith. He insisted, that he had not in the said year any calves in the said parish.

Both

Both the defendants admitted, that they had in the year 1764 sheep which were depastured occasionally on their farms adjoining, part in the parish of *Hafcomb*, and part in a neighbouring parish; but said, that they could not set forth the particular times when; and they admitted, that they were shorn out of the parish of *Hafcomb*; but insisted, that it was without any intent to defraud the plaintiff.

HORTON  
against  
GODDARD.

The defendant *Goddard* insisted, that he did not in the said year cut any underwood, save as before-mentioned, or sell any part thereof, save one hundred faggots; and denied that the plaintiff had any right to the tithes of underwood in the said parish.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel; and reading several depositions; and on full debate;

THE COURT ordered *Goddard* to account for the tithe of the wheat growing in the year 1764 on the close of land called *Spring Field*; and also for the tithe of his calves and underwood, as demanded by the said bill.

The tithes of  
wheat in *Spring  
Field* decreed.

THE COURT also ordered the defendants to account for the tithe of the milk which they respectively had from their cows in the said year during the time they were depastured in the said parish of *Hafcomb*; for the tithe of their apples, garden stuff, and poultry; for the tithe of the lambs fallen in the said year from their sheep in the parish; for the tithe of the agistment of their dry and unprofitable cattle, and of their sheep, during the time they were by them respectively fed and depastured in the parish of *Hafcomb*; and for *Easter* offerings as demanded by the bill.

The tithes of  
milk, fruit, poul-  
try, sheep, a-  
gistment, and  
*Easter* offerings,  
decreed.

THE COURT further ordered the defendants to pay the plaintiff the costs of this suit with relation to the several matters for which they are respectively decreed to account.

Costs ordered.

THE COURT further ordered the bill, so far as the same seeks satisfaction from *Goddard* for the tithe of hay and pigs, to be dismissed with costs.

The bill dismis-  
sed as to hay and  
pigs against  
*Goddard*.

THE COURT also declared the plaintiff to be entitled to the tithe of the second crop of clover, and of the clover which stood for seed, as demanded by his bill; but as he waived any account to be taken thereof, and agreed to accept of the sum of sixpence in lieu of such tithes, the Court did not direct any costs in relation thereto.

The tithes of  
the second crop  
of clover, and  
clover seed de-  
creed.

It was referred to the deputy remembrancer to take the account, with the usual directions. In pursuance of the said order, the deputy made his report, dated the twenty-third of *February* 1768; and upon reading the decree and report, it

The report con-  
firmed.

HORTON  
against  
GODDARD.

was ordered by the Court, that the report be ratified and confirmed, and that the defendants do forthwith pay to the plaintiff the sums reported due for their said tithes, and also his taxed costs, viz. the defendant *Goddard* seventeen shillings and sixpence; the defendant *Butcher* eleven shillings and fourpence for tithes; and one hundred and twenty-six pounds, fourteen shillings, and threepence, for costs.

HILARY TERM  
7. GEO. 3.

MORGAN against NEVILLE; et c. Contra.

*Essex*, 23d February 1767.

The rector of *Little Leighs*, in *Essex*, demands the tithes of milk; and insists, that by the custom of the parish the said tithe ought to be paid by every tenth meal at the church-porch.

THE bill stated, that the plaintiff, for twelve years and upwards, had been the lawful rector of the parish of *Little Leighs*, in the county of *Essex*, and, during all the said time, lawfully entitled to the tithes, both great and small, arising therein, particularly to the tithe of milk; that the defendant, for three years past, had occupied lands in the parish; that he had had great quantities of milk from the cattle he had kept and depastured on the said lands; that the plaintiff was entitled to the tithes of milk in kind, and ought to have been paid the same from *Michaelmas* 1764 to *Michaelmas* 1765; that he had frequently applied to the defendant, and requested him to pay the said tithe in kind, or to make him some satisfaction for the same, but that he had refused so to do; that by custom, time out of mind used in the said parish, all tithe milk arising therein ought to be brought to the church-porch of the said parish for the use of the parson thereof; and that the defendant had neglected or refused to observe the said custom. The bill therefore prayed, that the defendant might set forth the quantities of milk which he had during the time aforesaid, and be decreed to account for the value thereof.

The defendant says, the tithe milk ought to be paid at the cow-house of the owner of the cows;

The defendant admitted, that the plaintiff then was, and had been for twelve years past, lawful rector of the parish; and that he was, during the said time, lawfully entitled to the tithes, great and small, arising therein, and particularly to the tithes of milk; that he then was, and for three years past had been, occupier of divers lands in the parish and rectory, and that the plaintiff was entitled to, and ought, if he had thought proper, to have been paid the tithes of milk arising on his said lands for the said year; but he denied that the plaintiff had frequently applied to him to pay the said tithes, or to make him a satisfaction in lieu thereof, otherwise than after-mentioned; and insisted, that he had fairly set out the tenth meal of his milk in clean pails; and that the plaintiff might have fetched it away if he had thought proper so to do; but that he had neglected so to do, and that he, the defendant, had therefore caused the same to be thrown on the dunghill, apprehending that he had no right to make use thereof.



thereof. He denied that the tithe milk ought, by any immemorial custom, to be carried to the church-porch of the parish for the use of the parson; and insisted, that it ought to be taken by the plaintiff from the defendant's cow-house, where his cows were usually milked. He said, that he had kept no account of the said tithe milk; but believed that it might be worth seventeen shillings and sixpence, and no more. He insisted, that he had given the plaintiff notice to fetch it away at the several times, and in the manner in his answer mentioned.

MORGAN  
against  
NEVILLE;  
et à Contra.

The defendant filed his cross bill, insisting on the manner of setting out his tithe milk as therein stated; and praying, that the plaintiff might set forth and discover, whether he did not fairly set out every tenth meal of his milk in clean pails; whether such tenth meal was not the full and just tithe thereof; whether he might not have fetched away the same if he had thought proper so to do; whether he did not give him such notices in writing; and that he might be declared not liable to pay the value of the tithe milk so set out by him.

and files his  
cross bill to e-  
stablish that  
mode of tithing  
milk.

The rector said, that he believed that *Neville* had set out some part of the tithe milk as described in his cross bill; but whether he fairly set out every tenth meal of such milk in clean pails for the tithe thereof, or whether such tenth meal was the just and full tithe thereof, he knew not; but believed, that such pretended tithe of milk was set out by him at the usual place of milking, and not at the church-porch; and that therefore he did not fetch the same away; and he insisted on the custom of setting out the tithe milk, as in his original bill was set forth. He admitted, that such notices as stated in the cross bill had been given; but denied that *Neville* had justly, fairly, and properly set out the tithe.

The rector de-  
nies that it ought  
to be paid at the  
cow-house; and  
insists, that it  
ought to be  
brought to the  
church-porch.

The plaintiff in the original cause replied; the defendant rejoined; and witnesses were examined therein: the plaintiff in the cross cause replied; the defendant rejoined; but no witnesses were examined therein.

Both causes were ordered to be heard together, and the depositions taken in the original cause to be read and made use of as evidence in the cross cause; and on these causes coming on accordingly; and upon hearing counsel; and reading the proofs; and fully debating the matter;

THE COURT ordered *Neville* to account for the tithe of his milk arising from the cows by him kept and depastured within the said parish of *Little Leighs* during the time demanded by the bill, and to pay the plaintiff the value thereof with costs.

The defendant  
decreed to pay  
his tithe milk  
at the church-  
porch.

THE COURT also ordered the cross bill to be dismissed, but without costs.

WHITE

EASTER TERM  
7. GEO. 3.

WHITE *against* LAYTON ; *et è Contra.*

Norfolk, 11th May 1767.

The rector of *Reedham*, in *Norfolk*, is entitled to ss. a year, in lieu of the tithes of *Brotherholme's Marsh* ; but he is entitled to the tithes of all the other marsh grounds and park lands in the parish in kind.

THE bill stated, that about the twelfth of *August* 1758 the plaintiff was instituted, &c. into the rectory of the parish of *Reedham*, in the county of *Norfolk*, and thereby became entitled to the great and small tithes of the parish ; that in the year 1764, the defendant *Layton* occupied a farm, consisting, among other lands, of marshes, carr grounds, and pasture land, as in the bill was mentioned ; that he had fed and depastured thereon barren and unprofitable cattle ; and that the plaintiff was entitled to the tithe herbage thereof ; that he had also crops of turnips thereon, which he fed, gathered, and carried away, without setting out the tithes thereof, or making the plaintiff any satisfaction for the same ; that he had also had a crop of clover growing on *Little Calves Close* and *Great Park Close*, which he either made into hay or fed and depastured with barren and unprofitable cattle, for which there became likewise due to the plaintiff tithe hay or tithe herbage for such depasturing ; that he had also had a crop of wheat growing on *Pound Park Close* and *Lower Park Close*, which he had cut and carried away without setting out the tithe thereof ; that he had also had in the said year divers quantities of garden stuff growing in his garden belonging to the said farm ; that he likewise had pigs, geese, and chickens, increasing thereon, the tithes of all which were due to the plaintiff, but which had not been paid to him ; that at *Easter* 1764 there were *Easter* offerings due to him from the defendant for himself and family, and hearth money for his dwelling-house, which he had not paid. The bill also stated, that the defendant *Jary* had occupied a farm and lands in the parish ; that he had thereon the several titheable matters and things aforesaid ; that they were of considerable value ; that the defendants had not set out or paid the plaintiff any composition for the same, although he had frequently applied to them for that purpose ; but that they refused to comply with his request, on a pretence that certain *modus*es were due. The bill then charged, that tithes in kind were due for all the said lands ; and as an evidence thereof stated, that the defendants heretofore had agreed to pay the plaintiff certain compositions in lieu of tithes, to wit, six shillings an acre for wheat, three shillings for barley, two shillings for turnips, and one shilling for tithe herbage ; and that before the year 1764 they had paid him such compositions, but had refused to pay them since that time. The bill therefore prayed, that the defendants might be decreed to account for the *single value* of their tithes, and pay what should appear due upon such account.

The

The defendants, by their answer, admitted, that the plaintiff was rector, and entitled to all such tithes, both great and small, arising in the parish, as had been usually paid to his predecessors, rectors thereof.

WHITE  
against  
LAYTON;  
et al Contra.

The defendant *Layton* said, that in the said year he occupied *Reedham Park Hall* farm and lands, amongst which were the several closes and pieces of land, marshes, and carr grounds, &c. as stated in the bill; that he had fed and depastured thereon barren and unprofitable cattle, but could not set forth the number or kind, having occasionally, during that time, moved all or some of the said cattle from those lands to others; but that he believed the value of the pasture lands was about ten shillings an acre, and the tithe thereof one shilling; and that, according to such price, he had agreed with the plaintiff, and had paid him for the tithes thereof in 1763; that he was willing to have paid him after the said rate for the year 1764, except for such lands as are after-mentioned which were discharged from the payment of tithes by virtue of *modus*es or customary payments; that he did not receive any notice to the contrary until the first of *August* 1764, on which day the composition was, by agreement, to be paid to the plaintiff; and that on that day he offered to pay him the same, which he refused to accept; and therefore he insisted, that he ought not to be compelled to account for the tithes of those lands except according to such compositions. The defendants further said, that *Little Calves Close* was not sown with turnips that year, but that he had a crop of cole seed thereon, the tithes of which the plaintiff had received. He admitted, that in the said year he had a crop of clover in *Great Park Close*, which was fed with barren and unprofitable cattle; but said, that he could not set forth the value of the tithes, the composition usually paid by him to the plaintiff for fed clover being after the rate of two shillings an acre. He also said, that he had a crop of wheat on *Pound Park* and *Lower Park Closes*, but could not set forth the quantity of corn, or the value thereof: And he set forth his several other titheable matters, and the sum which he had agreed to pay the plaintiff for the same, and which sum he had accepted in the year 1763; and insisted, that he ought not to account with the plaintiff in any other manner than according to the agreement for the said respective tithes for 1764. He admitted, that he had not paid him tithes for any of the lands, or any composition for the same, during the said year; for that the five marshes described in the bill by the names of *Rush Lanham*, *Wet Lanham*, *Road Lanham*, *Cow Marsh*, and *Horse Marsh* (together with *Long Lanham* and *Short Lanham*, then in possession of the defendant *Jary*), were anciently considered as one marsh; and so describes several other marshes; and that, from time immemorial, the following *modus*es or customary payments had been payable to the rector from  
the



WHITE  
against  
LAYTON;  
et c. Contra.

the respective occupiers of the said marshes on the first of *August* yearly, old style, in lieu of all tithes arising therefrom, TO WIT, the marshes formerly called *Lammas Marsh*, three shillings and fourpence; *Sisb Marsh*, or *Sisse Marsh Hill*, ten shillings; *Hitheholmes* and *Nasbes Hitheholme*, three shillings; that the rectors had always received such several sums for and in lieu of the tithes thereof; that no tithes in kind, or composition for the same, had ever been paid to the rector besides those sums, except what had been paid to the plaintiff since he became rector thereof; and that he had always been ready and willing to pay the plaintiff the several sums before-mentioned, in lieu of the tithes of the said marshes, for such part as were occupied by him for 1764; but that he had refused to accept the same; and he insisted, that he was not obliged to make the plaintiff any other compensation for the same; for that although he had compounded for sixteen shillings and fourpence with the plaintiff for the same, which the plaintiff had also refused to accept, that ought not to deprive him of the benefit of the said *modus*es or customary payments as before mentioned.

The defendant *Jary* said, that in the said year he occupied a farm and lands and a mill; that he held several closes and pieces of land, marshes, and carr grounds, and also the glebe lands belonging to the plaintiff: and he set forth the titheable matters and things which he had thereon, and the value of the tithes, *Easter* offerings, and hearth money; and set up the several *modus*es for the marshes as the other defendant had done, and the agreement for the tithes of the other lands in his occupation; and hoped that he should not be deprived of the benefit of the said *modus*es.

Both the defendants said, that they believed that the *Park Carr*, *Pound Park Close*, *Lower Park*, *Great Park*, *Park Carr*, and *Park Closes*, were formerly one close or parcel of ground inclosed with pales, and called A PARK; that, from time immemorial, there had been due and payable from the occupiers thereof, whilst they were one parcel of ground, and since they had been divided, a *modus* or customary payment of five shillings, in lieu of all tithes arising thereon, on the first of *August* yearly, old style; that the rectors had always, from time immemorial, before and since the division of the said closes until the plaintiff became rector thereof, accepted of the same in full satisfaction and discharge of such tithes; and that since the plaintiff became rector, no tithes in kind had ever been paid to him for the same, the plaintiff having always accepted the said sum until the year 1761 for the said lands; that he then threatened them with suits, and they compounded with him for the said lands; but that such compositions ought not to deprive them of the said *modus*.

A crossa

A cross bill was filed, stating, that the plaintiff *C. Leathes*, during the year 1764, and long before, was seised in fee of and in the seven marshes in the bill described; and that for time immemorial, and until the defendant became rector of the said parish, the several *modus*, as in the bill are mentioned, had been, and of right ought to be paid, on the first day of *August* yearly according to old style, or as soon after as demanded, to the rectors of *Reedham* for the time being, by the respective occupiers of the said marshes, for and in lieu of all tithes arising thereon; that the plaintiff was also seised in fee of *the Park Closes*, as named aforesaid; and the said *modus* of five shillings payable for the same was set up. The bill also stated, that the said *Leathes* had let the aforesaid marshes and lands to the other defendants; and insisted, that the said several *modus* had always been accepted by the former rectors, and that the defendant had received the same: and they set forth former suits in this court; and insisted, that tithes in kind had never been paid for the said marshes and lands. The cross bill therefore prayed, that the several *modus* might be established.

WHITE  
against  
LAYTON  
et al. Comrs.

The defendant *White*, by his answer, said, that he believed that the plaintiff *Leathes* was seised in fee of the several marshes in *Reedham* as aforesaid, whereof the defendant was then rector, and entitled to the tithes arising therein; that he knew not that for time immemorial until he became rector thereof the several *modus* or customary payments aforesaid had been, and of right ought to be paid on the first of *August* yearly according to old style, or so soon after as demanded, to the rector there for the time being, by the occupiers of the said marshes, in lieu of tithes thereof, as in the said answer is mentioned; that he believed the said plaintiff was also seised of *the Park Closes*; but denied, that he knew that the said *modus* of five shillings was payable yearly for the same in lieu of tithes. He also said, that he did not believe that the said *modus* had been received by the rectors of the said parish his predecessors as all that was due to them for the tithes of the said marshes or closes of land; or that no tithes in kind had ever been paid to any rector thereof before the defendant came to such rectory by the presentation of the said plaintiff: and he insisted, that no *modus* or customary payment whatever was or could be set up in discharge of tithes of the aforesaid marshes and lands.

The defendant *North* said, that he believed that the plaintiff *Leathes* was seised in fee of the said marshes and closes; that the other plaintiffs rented the same of him; that the defendant *White* became rector thereof in 1758; that he did not believe that from that time to 1764 he had received of the plaintiff *Layton* sixteen shillings and fourpence as a *modus* pretended to be due for the marshes; that he did believe that he had received of the plaintiff *Jary* five shillings

WHITE  
against  
LAYTON;  
q. & Contra.

lieu and discharge of the tithes of *Park Closes* in 1760, and also of the plaintiff *Layton* fourteen shillings, in lieu of tithes of *Lee's Marsh*; but knew not that the defendant *White* was satisfied with such payments, or that the same had been legally established in the said parish from time immemorial as *modus* in lieu and discharge of tithes thereof.

The plaintiffs replied in both causes; the defendants rejoined; and witnesses were examined on both sides in the original cause. By an order, both causes were ordered to be heard together, and the depositions in the original cause read in the cross cause, saving just exceptions; and upon hearing counsel for all parties; and reading several depositions and receipts; and upon full debate of the matter;

THE COURT ordered the defendants in the original cause to account for all and every the titheable matters demanded by the bill (except as to the marsh called *Brotherholmes*, for which a *modus* of one shilling *per annum* was proved to be payable in lieu of the tithes thereof), with costs of this suit to be taxed.

THE COURT further ordered and decreed the cross bill, so far as the same related to the *modus* of one shilling for the marsh called *Brotherholmes*, to be established with costs; and as to all other matters dismissed with costs, but without prejudice to any remedy the plaintiffs in that suit might have or take against the said *M. White*, clerk, touching all or any of the matters therein mentioned.

EASTER TERM  
7. GEO. 3.

WHITE against READ.

Norfolk, 25th May 1767.

The vicar of *Freethorpe*, in *Norfolk*, is entitled to the tithes of *clover hay* arising in the parish.

See *Emmett v. White*, post. 9th February 1769, Hilary Term, 3. Geo. 3.

THE plaintiff, as vicar of *Freethorpe*, in the county of *Norfolk*, stated, that by virtue of some ancient endowment, usage, or prescription, the vicars of the said vicarage for the time being had, time immemorially, been entitled to have and receive, and until the interruption after-mentioned had constantly received, amongst other tithes belonging to the said vicarage, the tithes of hay yearly arising therein, in as large and ample a manner as former vicars had enjoyed the same; that the defendant *Read* was an occupier of arable lands within the parish, and had reaped therefrom large quantities of clover hay since the plaintiff's institution thereto; that the said *Read*, combining with the other defendant, the improper rector of the great tithes, had absolutely refused to set out the tithes of clover hay, or to pay him any composition for the same, and pretended that he, as vicar, was not entitled thereto, or to any composition for the same, and denied that he, or any former vicar, had ever enjoyed the same, except by the consent and agreement of



of the rectors thereof; that the defendant *Leathes* being the rector impropriate of the said rectory, and entitled to the rectorial tithes arising therein, had demised to *Read* the said rectory impropriate, and the tithes thereof, and all other tithes great and small; that by virtue thereof, the said *Read* pretended that he was entitled to the tithe of clover hay, and had therefore, in the year 1765, refused to set out the same for the plaintiff, or to pay him any composition for the same. The bill therefore prayed, that an account might be taken of the quantity of the tithe of clover hay which had grown upon the lands in *Read's* occupation in the year 1765; that what should appear coming to the plaintiff upon such account might be paid to him by the said defendant; and that the plaintiff's right to the said tithe might be established, and he be quieted in the enjoyment thereof for the future.

WHITE  
against  
READ.

The defendants admitted, that *White* was vicar of the parish, and that he was entitled to all such tithes as belonged to his predecessors; but denied, that either he or his predecessors had ever been entitled to tithes of clover hay growing in the said parish, for that clover hay was within the parish titheable as a great tithe, and as such belonged to *Read*, as the lessee of *Leathes*; and insisted, that the vicarage was not endowed with the tithes of hay, much less of clover hay, which was little known or cultivated in *England* in those early times in which most vicarages were endowed; and that clover hay being a modern production, the vicar could not be entitled to the tithes thereof by prescription.

The defendant *Read* said, in the year 1765 he reaped clover hay on his closes, and set forth the quantities and values thereof; and admitted, that he had refused the plaintiff the tithe thereof, as he conceived the same belonged to him as lessee, it being a rectorial tithe; that since he had been lessee of the rectory, he had, in compounding for the tithes, not insisted on any thing being paid to him for the tithes of clover hay; and that he had confined his demand to the tithes of corn, as being the principal tithe; and that he had paid the tithes of clover hay in his own wrong to the vicar till the year 1765.

The defendant *Leathes* said, he did not know, until the year 1765, that his tenant had paid or compounded for the tithes of clover hay; but that as soon as he was so informed, he ordered his tenant not to do it for the future, apprehending that it was a great tithe, and therefore not due to the vicar; and he insisted on a right to the tithes of clover hay, as being a great tithe.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and now upon hearing counsel; and reading several depositions; and on full debate of the matter;

THE

WHITE  
against  
READ.

THE COURT ordered the defendants to account with the plaintiff for all the tithe of clover hay as demanded by the bill, they consenting to establish his right to such tithes, and to pay him his costs.

TRIN. TERM,  
7. GEO. 3.

LLOYD against BUTCHER.

Denbighshire, 6th July 1767.

The lessee of the  
tithes of *Bodferry*, in *Denbighshire*, is entitled to the tithes  
of the township  
of *Aberwheeler*.

THE bill stated, that the *Bishop of Saint Asaph* for the time being was seised of and well entitled to the great and small tithes of the township of *Aberwheeler*, in the parish of *Bodferry*, in the county of *Denbigh*; that the plaintiff *Lloyd*, under one or more leases thereof made and executed by the bishop, became entitled to such tithes in the year 1762, and had continued so entitled ever since; that he had demised the said tithes, except the tithes of *Lleweny Demesne* to the other plaintiffs from *Candlemas* 1763 for three years; that in the years 1763 and 1764 the defendant farmed *Salisbury Plain Meadow*, within the said township, and no part of *Lleweny Demesne*, and mowed several acres thereof; that he also sowed grain on some part, and fed oxen, cows, and unprofitable cattle, sheep and lambs on the remainder; that he had paid the tithes in kind for the hay and the arable land, but had paid nothing for tithe herbage; that he also occupied a field of clover therein, whereon he had fed wether sheep and other unprofitable cattle, for which he ought to have paid the tithe of agistment, but had refused so to do; that in the said years he had several calves dropped on the said lands, but had refused to pay the plaintiffs tithes for the same, or for his lambs or wool; that he not only refused to account with the plaintiffs touching the said tithes so subtracted, but had likewise refused to give them any account of the number of cows, sheep, lambs, calves, and unprofitable cattle he so fed on the said lands. The bill therefore prayed, that the defendant might account.

The defendant said, that he had heard that the *Bishop of Saint Asaph* for the time being was seised of the great and small tithes of the said township; that *Lloyd* had become entitled to the same under a lease thereof from the said bishop for three years; that being entitled to such tithes, he had let part thereof to the inhabitants, and collected other part thereof in kind; that in the said years he occupied *Salisbury Plain Meadow*, within the said township, and no part of *Lleweny Demesne*; and he set forth the quantities, qualities and values of his titheable matters and things he had renewing on his said lands.

THE COURT, by consent, ordered the defendant to pay eleven pounds, seven shillings, in full satisfaction of the tithes demanded by the bill, with costs.

LIDDELL

## LIDDELL against HANCOCK,

Yorkshire, 14th July 1767.

TRIN. TERM,  
7. GEO. 3.

THE bill stated, that the plaintiff *Liddell* was lately, and until the sale thereof, lawfully and rightfully seised in fee, of and in the manor of *Walkington*, *Provost Fee*, and of divers messuages, cottages, lands, tenements, and particularly of and in the *Provost Fee* manor house, standing in *Hall Garth Close*, containing eight acres; that he was also seised in fee of divers other parcels of arable, meadow, and pasture ground, called *the Manor Lands*, lying in *Flatts* and dispersed in the several fields of *Walkington*, containing fourteen oxgangs; that he was also seised of several parcels of woodlands, called the *West Wood*, or *Provost Fee Wood*, then in the possession of *P. Fenby*, as tenant thereof; that he was also seised of other parcels of woodlands, called the *East Wood*, or *Provost Wood*, including *Swine Kell*, now in the possession of the plaintiff *Boldero*, his tenants or assigns; that tithes in kind had immemorially been paid to the rector of *Walkington*, in the county of *York*, for and in respect of divers lands, underwoods, and other titheable matters within the said parish; but that, for time whereof the memory of man was not to the contrary, a certain ancient composition or *modus* had been constantly paid to and accepted by the rectors for the tithes in kind, both great and small, for divers other parts and parcels of the said manor and parish; that particularly all occupiers and proprietors of *the Hall Garth*, of the said woods, and of the fourteen oxgangs, had immemorially been accustomed to pay to the rector of *Walkington* yearly at *Easter*, or whensoever after that feast it should be required by the said rector, the sum of two shillings and sixpence, in lieu of all tithes whatsoever of *the Hall Garth*, the fourteen oxgangs of land, and the woods aforesaid, in each respective year; and that the rector for the time being had constantly and invariably accepted thereof as a composition or *modus* in lieu of all the said tithes; that the defendant was inducted into the said rectory in the year 1751, and had, contrary to such ancient usage and prescription, lately claimed tithes in kind for and in respect of *the Hall Garth*, the fourteen oxgangs, and the woods; although it appeared, by a terrier subscribed by himself, and by an ancient book in his own possession, and from which he had himself made an extract, that the said annual sum of two shillings and sixpence had immemorially been paid and accepted of as a *modus* or composition for the tithes in kind for the premises aforesaid, in manner aforesaid. The bill then averred, that the plaintiffs were ready to make the said payment, but that the defendant had refused to accept the same; and therefore prayed, that the plaintiff *Liddell* might be at liberty to examine

The rector of *Walkington*, in *Yorkshire*, is only entitled to 2s. 6d. a year at *Easter*, in lieu of all tithes, great and small, of the *Hall Garth*, the *Manor Lands*, the *East Wood*, and the *West Wood*.



LIDDELL  
against  
HANCOCK.

his witnesses in *perpetuam rei memoriam*, touching the matters aforesaid; that the plaintiffs and those claiming under them might have the benefit of such testimony; and that the said *modus* might be declared to be well proved, and decreed to be established.

The defendant admitted, that *Liddell* then was, or lately had been seised in his *demesne as of fee*, or of some other good estate of inheritance, of and in the manor of *Walkington*, *Provost Fee*, the manor house close, the several oxgangs of land, and the parcels of wood ground in said bill mentioned; but denied that for time immemorial a certain *modus* or composition had been constantly or ever paid to or accepted by the rectors of *Walkington* for the tithes in kind of divers or any parts or parcels of the said manor of *Walkington*, or of any house, close, oxgangs of land, or woods within the said parish; or that all or any of the occupiers or proprietors of the said manor-house and close, and the said oxgangs of land and woods, or any part thereof for the time being, had been used or accustomed, during all the time aforesaid, to pay to the rector of the said rectory and parish church of *Walkington* for the time being, his farmers or tenants thereof, or to any of them, yearly, or at any time of the year, the sum of two shillings and sixpence; or any other sum of money, in full compensation of, for, and instead of all or any tithes whatsoever arising out of or from the said manor-house, *Hall Garth*, oxgangs of land, and the woods, or any of them, or that the same was ever paid or said to be paid as a tithe penny, or a composition for any tithe whatsoever, or that the rector did ever accept the same in lieu of tithes in kind for the same; but that, on the contrary, such annual sum of two shillings and sixpence had always constantly and invariably been called and reputed to be an *obit rent* or *obit money*, and had always been paid and tendered as such, as by receipts in the plaintiff's possession would appear. He also denied, that the said annual rent of two shillings and sixpence had ever been paid or offered to him since he had been rector, or to any of his predecessors, as and for a *modus* or composition in lieu as aforesaid, or any otherwise than as or in the name of an *obit rent* or *obit money* only. He also said, that ever since he had been rector the plaintiffs had pretended exemption from tithes for and in respect of the said manor-house close, &c.; that he believed it had no legal foundation; and that they had tendered the said *moduses*, which he had refused: he admitted that the same persons had never paid any tithes to him, nor, as he ever heard, to his predecessors. He further said, that by an act of parliament, of the first year of *Edward the Sixth*, all *obit rents* were not annihilated, but only the superstitious uses to which they were originally appropriated; and that all rents which had been appointed

pointed for any such purposes were thereby vested in THE KING; that there were other lands in the parish out of which a rent called an *obit rent* was paid, and which also paid tithes in kind. He admitted, that he had signed such terrier as in the bill is mentioned; and he set forth the terriers and such of the old books as he had found.

LIDDELL  
against  
HANCOCK,

The plaintiffs replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel, and after debate thereof, the defendants' counsel proposed and desired the court to direct an issue to try the *modus* laid and set up in and by the bill; and the following issue was directed: "Whether that, for and during the time whereof the memory of man is not to the contrary, the sum of two shillings and sixpence, or any other sum of money, had used and been accustomed to be yearly paid by the farmers, occupiers, or proprietors, for the time being, of the said *Provoost Fee* manor-house and close, together called and known by the name of *the Hall Garth*, the said fourteen oxgangs of land, and the said two woods of the plaintiffs, or one of them, in the pleadings in this cause mentioned and described, to the rector of the said parish church and rectory of *Walkington*, in the county of *York*, in the pleadings in this cause mentioned, for the time being, or to his collectors, tenants, farmers, servants, or agents, as a *modus* or composition for or in satisfaction, lieu, place, and stead, of all and all manner of tithes in kind whatsoever, yearly issuing out of and for the said manor-house and close, called and known together by the name of *the Hall Garth*, fourteen oxgangs of land and woods above mentioned, or any and which of them;" the plaintiffs in equity to be plaintiffs at law; to be tried by a special jury; the judge to indorse, &c.; and further directions to be reserved till after trial.

A trial was accordingly had, when a verdict was given for the plaintiffs, viz. and the jurors say upon their oath, "That, for and during the time whereof the memory of man is not to the contrary, the sum of two shillings and sixpence has used and been accustomed to be yearly paid by the farmers, occupiers, or proprietors for the time being, of the within-mentioned *Provoost Fee* manor house and close, together called and known by the name of *the Hall Garth*, the within-mentioned fourteen oxgangs of land, and the within-mentioned woods of the said plaintiffs, or one of them, to the rector of the within-mentioned parish church and rectory of *Walkington* within specified, for the time being, or to his collectors, tenants, farmers, servants, or agents, due or payable to and accepted of, and received by the said rector for the time being, or his collectors, tenants, farmers, servants, or agents, as a *modus* or composition for and in satisfaction, lieu, place, and stead, of all and all manner of tithes in kind

LIDDELL  
against  
HANCOCK.

" whatsoever, yearly issuing out of and for the said within-  
" written manor-house and close, called and known together  
" by the name of *the Hall Garth*, fourteen oxgangs of lands  
" and woods, and every of them, in manner and form as the  
" said plaintiffs have for themselves within in that behalf al-  
" ledged."

The cause now coming on for further directions, counsel were heard on both sides, and the decree and *poslea* read; and

THE COURT decreed, that the said *modus*, composition, or customary payment of two shillings and sixpence, paid yearly at *Easter*, for and in respect of the *Provost Fee*, manor-house, and close, together called and known by the name of *the Hall Garth*, the said fourteen ox-gangs of land, and the said two woods in the pleadings of this cause mentioned and described, to the rector of *Walkington*, in lieu of all manner of tithes in kind whatsoever, both great and small, of the said premises and every of them, with their appurtenances, be absolutely confirmed and established; that the defendant do pay to the said plaintiffs, or to one of them, all their costs both at law and in this court, of and in this cause, to be taxed by the deputy remembrancer of this court; and that the bill filed by the defendant be dismissed by consent without costs.

T. PARKER.  
S. S. SMYTHE.  
RICH. ADAMS.  
GEO. PERROTT.

TRIN. TERM,  
7. GEO. 3.

SHUTZ against GUY.

*Buckinghamshire, 14th July 1767.*

The rector of  
*Marsh Gibbon*, in  
*Buckinghamshire*,  
is entitled to the  
tithes of the pa-  
rish in kind.

THE bill stated, that the plaintiff was lawfully instituted, seven years ago, into the rectory of *Marsh Gibbon*, in the county of *Bucks*; that he still continued rector, and, as such, was entitled to all tithes, *Easter* offerings, oblations, obventions, duties, and profits arising therein; that the defendants had, for several years past, occupied large farms there; that they, with the parishioners, had agreed to pay him certain pecuniary compositions in lieu of their tithes in kind; that the said agreement subsisted till *Michaelmas Day* last; that before *Michaelmas* he had given notice in writing to the parishioners severally to determine their several compositions, and that for the future they should set out their tithes in kind; that they accordingly, for a few weeks afterwards, set out their tithes in kind; that since that time they had fed and depastured on their respective farms divers cattle, sheep, and lambs, of their own and others, and had also agisted dry and unprofitable cattle, and also profited themselves by sale thereof when fattened and weaned; that they had also sold calves and other young cattle fallen on the said farms,



SHUTZ  
against  
GUY.

farms, and had sheared great quantities of wool, and had great quantities of milk and other titheable matters on their said farms, the tithes of all which ought to have been duly paid to him, together with *Easter* offerings and other duties for themselves and families during the times they were resident in the said parish; but that they had subtracted and withheld from him all such their small tithes, and refused to set out or pay the same in kind, setting up various pretences, *modus*, or compositions in lieu thereof, and also a fictitious terrier fraudulently obtained about the year 1707; for that by two ancient terriers, dated in 1625 and 1700, duly registered, and now in the possession of the *Bishop of Lincoln*, it did not appear by either of them that there ever was any *modus* or composition in the said parish. The bill therefore prayed, that they might account for all the said titheable matters so subtracted for the time aforesaid.

The defendants admitted, that the plaintiff was rector of the parish, and entitled to all the tithes mentioned in the bill, except to the tithes in kind of such titheable matters within the whole of the rectory, or on or from any particular lands within the same, in lieu whereof ancient customary payments had been made by way of *modus*. They also admitted, that they occupied lands therein; and said, that the whole of the lands in the defendant *Guy's* occupation did not contain more than five acres of meadow and pasture ground, called *Holmes Closes*; that he had occupied them since 1764; and that he did not occupy any other lands, except a garden or orchard to his house.

The other defendants set forth the quantity of land they occupied, which they said was commonable land, &c.; and that according to ancient custom and usage within the parish, the following sums, and no more, were due and payable to the rector, as *modus*, in lieu of tithes of the several matters and things arising on their respective lands in the parish, or on the commonable grounds whereon they had a right of common in respect thereof, THAT IS TO SAY, one shilling and fourpence for and in lieu of every tenth lamb within the year, payable on the twenty-fifth of *April* in each year; and that when any occupier of lands had not had in one year ten lambs, then one penny halfpenny for every lamb; the left shoulder of every calf which each occupier did, from time to time, kill, in lieu of all tithe of calves so killed; the tenth shilling for every calf fallen in the said parish and sold; one shilling yearly, on the first of *August*, for every milch cow kept by such occupier, in lieu of tithe milk of such cow; two eggs yearly, on *Saturday* in *Easter Week*, for every hen, and three eggs yearly, on the same day, for every cock, in lieu of tithe eggs of such hens; that the usual or customary way of making satisfaction for tithes of wool was, and had been beyond memory, to pay every tenth fleece of wool of the sheep that were kept all the year in the field, by the owner's laying down ten

SHUTE  
against  
GUY.

fleece at a time, and the owner taking two, then the tithing-man one, and then the owner the remaining seven; and for sheep that were brought into the parish after *Lady Day* in each year, to pay every thirtieth fleece, in lieu of the tithe of wool of such sheep; that such *modus*es were, and had been constantly paid and taken in lieu of tithes of wool shorn within the said parish; that the usual way of paying tithe for pigs was, and always had been, for time out of mind, to pay every tenth pig, viz. the owner to chuse first two pigs, then the tithing-man one, and the owner the remaining seven: and they admitted, that they had from time to time, since *Michaelmas* 1764, respectively had on the lands occupied by them within the said rectory and parish titheable matters.

The defendants *Roberts* and *Templar* said, that by indenture, dated the thirty first of *December* 1761, the plaintiff had demised to them and others, occupiers of land within the rectory, all manner of tithes, *modus*es, or compositions of tithes whatsoever within or out of the township or parish of *Marsh Gibbon* and the fields thereof, which belonged to him as rector thereof (excepting *Easter* offerings, the glebe lands, the rectory house and the appurtenances, the two glebe closes, the tithe of the said closes, the church-yard, and the tithe of corn of the inclosed grounds of *A. Croke*), to hold from *Michaelmas Day* then last past for three years, but which lease expired at *Michaelmas* 1764.

The defendants insisted, that the terrier in 1707 was an evidence of such *modus*es; but they admitted, that the same was not signed by the rector, but only by the curate and churchwardens.

They also insisted, that the plaintiff was not entitled to tithe hay on all the closes and meadow grounds within the rectory, but that some *modus* or other recompence was due in lieu thereof; but that as the plaintiff had not by his bill required any satisfaction for such tithe hay, they were not bound to discover the same; and they insisted on the aforesaid several *modus*es in bar to the titheable matters in the bill; and hoped they should have the like benefit as if they had pleaded the same.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and now upon hearing counsel on both sides; and reading the deposition of *J. Cater* only; and on full debate of the matter;

THE COURT ordered, that it be referred to the deputy remembrancer to take an account of, and report to this court what was respectively due to the plaintiff from the defendants for all the several species of tithes demanded by the bill, with  
costs

costs of suit to this time to be taxed. The deputy made his report accordingly; and on the sixth of July 1768, the same was ratified and confirmed.

SHUTZ  
against  
GUY.

THE COURT FULL.

HILL *against* MATON.

*Hampshire, 17th July 1767.*

TRIN. TERM,  
7. GEO. 3.

THE bill stated, that the plaintiff was, in April 1762, lawfully instituted and inducted into the vicarage of the parish of *Nether Wallop*, in the county of *Hants*, and as such was, by endowment or ancient usage, entitled to all small tithes yearly arising within the parish; that the defendant was, and for several years past had been, occupier of lands therein, from which he had yearly several titheable matters and things; that particularly in the year 1763 he had fed and depastured thereon divers barren and unprofitable cattle; that he had also sheep, from which he had lambs and wool, and had also milch cows, from which he had calves and milk; that he also had several sows, from whence he had large farrows of pigs, and divers other titheable matters and things, for which he ought to have made the plaintiff some satisfaction; but that he pretended there was some small *modus* or customary sum payable in lieu of tithes in kind within the said parish; but refused to discover the same. The bill therefore prayed a discovery and account.

The manner in which the vicar of *Nether Wallop*, in *Hampshire*, is entitled to his tithes.

See the case of *Hayes v. Cox*, vol. i. page 69.

The defendant admitted, that the plaintiff was vicar, and, as such, entitled to all small tithes arising in the parish, or to some *modus* in lieu thereof. He also admitted, that he was, and for several years past had been, occupier of *Garlick Hill Farm*, and *Coniger Field*, part of *Place Farm*; and said, that there were five capital farms, called *Berry Court Farm*, *Garlick Farm*, *Place Farm*, *Pyle's Farm*, and *Middle Walled Farm*; that it had been a custom time immemorial for the said five farms to pay a *modus* to the vicar in lieu of tithes in kind for the following small titheable things, *viz.* threepence for every lamb, in lieu of the tithes in kind of lambs and lambs wool; eightpence for every calf; twopence for every milch cow, in lieu of the tithe of milk; and one shilling for every tenth pig; that he, the defendant, paid only eightpence in lieu of the tithes in kind for the garden and eggs; but that he had heard, and believed, that three, if not the four other of the said five farms, paid one shilling in lieu of the tithes in kind for gardens and eggs. He also said, that it had been the custom for the vicar to take the tithe of wool and apples in kind; that ever since he had occupied *Garlick Hill Farm*, the vicar of the said parish, the plaintiff's predecessors, had accepted of him

M ♠

annually



HILL  
against  
MATON.

annually the aforefaid *modus*, in lieu of the tithes of lambs, lamb's wool, calves, pigs, milch cows, gardens, and eggs; that at *Whitsuntide* 1763 he had settled an account with the plaintiff for the money that was due to him in lieu of small tithes, according to the said *modus*, for one year; that the plaintiff gave him a receipt in full for the same to that time; and that for the year following he did not depasture on his lands any barren or unprofitable cattle, except one bull and two cows, which he sold and killed; and he insisted, that he ought not to pay any tithe for the same: he set forth an account of the species, quantities, qualities, and values of the several titheable matters and things which had arisen on the premises in the year 1764; and averred, that he had tendered the plaintiff three pounds, one shilling, and sevenpence, being the full value of such small tithes for that year. He also insisted, that although the *modus* might be of less value than the tithes in kind, yet that the plaintiff was bound to accept the same as they had been usually and invariably paid to the vicars of the said parish for time immemorial, especially as they were near the full value of what the tithes thereof were worth forty years ago.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and now upon hearing counsel; and reading several proofs in the cause;

THE COURT ordered the deputy remembrancer to take an account of what was due to the plaintiff from the defendant from *Whitsuntide* 1763 for the tithes of calves, pigs, wool of lambs, garden stuff, and eggs, and of the number of milch cows fed and depastured by the defendant on the lands in the pleadings mentioned from *Whitsuntide* 1763.

IT WAS ALSO ORDERED, by consent, that the defendant do pay to the plaintiff twopence for each milch cow by him fed and depastured as aforefaid from the same time, in lieu of tithe milk.

The bill as to all other matters was dismissed.

The deputy remembrancer made his report, dated the sixteenth of *December* 1769; and on the twenty-third of *February* 1770, it was ratified and confirmed, and the defendant ordered to pay to the plaintiff nine pounds, one shilling, and fourpence halfpenny reported due, together with the costs of this suit as to all the matters for which the account was directed and taken, to be taxed; and the plaintiff to pay to the defendant the costs to be taxed of all the matters for which the bill was dismissed.

PARKER, *Chief Baron.*

ADAMS, *Baron.*

PERROTT, *Baron.*

SALMON

SALMON *against* THE BISHOP OF ELY.MICH. TERM,  
8. GEO. 3.

Norfolk, 20th November 1767.

THE plaintiff, as vicar of the parish of *Thurston*, in the county of *Norfolk*, stated, by his bill, that by virtue of some ancient endowment, custom, usage, prescription, or otherwise, the vicars of the said vicarage had immemorially been entitled to have and receive, and of right constantly had received, amongst other tithes belonging to the said vicarage, all the tithes of hay yearly arising in the parish, or some composition or satisfaction for the same; that in the year 1762 he was presented to the same, and thereby became entitled to the tithes of hay; that the defendants had occupied arable and meadow grounds therein, and had severally cut considerable quantities of hay therefrom since he became vicar thereof, but had absolutely refused to set out the tithe thereof, or to satisfy him for the same, on a pretence that it belonged to the bishop or his lessee, and that they had set out the same to the lessee, who had carried it away. The bill therefore prayed, that the defendants, *the Bishop of Ely* and his lessee, might set forth what right or interest they claimed to the tithe hay within the said parish or the titheable places thereof, and how they made out the same; that an account might be taken of the quantity and value of the said tithe hay which had arisen on the lands of the defendants since the plaintiff's institution and induction; that what should appear due to the plaintiff upon such account might be paid to him accordingly, either by the occupiers or the lessee; and that his right to the said tithes might be established, and he quieted in the enjoyment thereof for the future.

*The Bishop of Ely*, as impropriator of *Thurston*, in *Norfolk*, and not the vicar, is entitled to the tithe hay of the parish.

*The Bishop of Ely* admitted, that the plaintiff was vicar of the parish; but he said, that he had never heard that the vicars thereof, by any ancient or other custom, endowment, or otherwise, had been, time out of mind, entitled to all tithes of hay therein; that he, by indenture of lease dated the twenty-ninth of September 1763, had demised to the defendant *Clarke* all that the rectory and parsonage of *Thurston*, with the rights, members, and appurtenances, &c. with the tithes of corn, grain, and hay, and all other tithes whatsoever, as well great as small, obventions, fruits, profits, commodities, &c. (except the advowson of the vicarage of *Thurston*, and all timber trees, woods, and underwoods), to hold to him, &c. for twenty-one years, at nine pounds, thirteen shillings, and fourpence a-year; that he had caused diligent search to be made into several books for one hundred and fifty years past in his custody, wherein the several leases granted by his predecessors of the said rectory had been duly registered, and that it appeared from every such registry that the tithes of hay had been by all such leases granted and

SALMON  
against  
THE BISHOP OF  
ELY.

and demised; that he had seen a lease, dated the tenth of *October*, in the twenty-second year of *James the First*, to the effect of the lease granted by him, and in which tithes of corn and hay were expressly mentioned to be demised; that he believed all the leases ever granted of the said rectory by any of his predecessors contained the like demise; that the tithes of hay were always inserted therein; and that the said lease to the defendant *Clarke* was prepared agreeable thereto.

The defendant *Clarke* denied, that by virtue of any ancient endowment, usage, prescription, or otherwise, the vicars of *Thurston* had immemorially been entitled to the tithes of hay in the parish, or to any composition for the same; and said, that on the contrary the tithes of hay arising therein had always been considered a rectorial tithe, and not a vicarial tithe; and that the same had never been enjoyed by the plaintiff, or by any of the former vicars of the said parish, as vicars thereof, but only by the impropiators of the said rectory for the time being, or their lessee, except that the plaintiff had enjoyed the said tithes for two years by imposition on the defendant: and he insisted, that by virtue of his said lease he was entitled to the said tithe hay. He also said, that upon searching the bishop's books it appeared, that the tithes of corn, grain, and hay were expressly granted from *Queen Elizabeth*, in the forty-second year of her reign, to the then *Bishop of Ely* and his successors; and that the bishop for the time being had, in all the leases of the said rectory, expressly granted the tithes of corn and hay: and he submitted to account for tithe hay received, in case the plaintiff should appear to be entitled thereto.

The defendant *Hart* and others, the occupiers, said, that they had always understood and believed, that the tithe of hay in the said parish was a rectorial tithe. They admitted, that they occupied farms therein; and averred, that they had set out their tithe hay arising thereon; that they had given notice thereof both to the plaintiff and the lessee; and that they had paid their tithe hay, or a composition for the same, sometimes to the plaintiff, and at other times to the defendant *Clarke*.

The plaintiff replied; the defendants rejoined; and witnesses were examined on the part of the plaintiff and the defendant *Clarke* only; and upon hearing counsel for all parties; and reading the several proofs taken in the cause; and reading, by consent, a true copy of a parliamentary survey from the records of the *Archbishop of Canterbury*, at *Lambeth*, dated the twenty-ninth of *May* 1648; and also upon reading a counterpart of a lease, dated the twenty-fifth of *July* 1744, of the great tithes of the said parish of *Thurston* from *William Brewster* to *J. Becket* and *R. Brown*; a lease of the great tithes from the then *Bishop of Ely* to the said *W. Brewster*, dated the thirtieth



thirtieth of *April* 1751; a counterpart of a lease to *Thomas Thurlow*, clerk, of the great tithes from the defendant the present *Bishop of Ely*; other proofs taken in the cause; a letter from the plaintiff to the defendant *Clarke*, signed by the plaintiff, and dated the second of *June* 1762; a grant under THE GREAT SEAL OF ENGLAND, in the forty-second year of the reign of *Queen Elizabeth*, transmitted into the office of the lord treasurer's remembrancer of this court; and on full debate of the matter;

SALMON  
against  
THE BISHOP OF  
ELY.

THE COURT decreed the bill to be dismissed with costs.

BEAUMONT against SHILCOT.

*Suffolk*, 4th February 1768.

HILARY TERM  
3 GEO. 3.

THE bill stated, that the plaintiff, about *November* 1760, was instituted into the vicarage and parish-church of *Framden*, in the county of *Suffolk*, and had thereby become entitled to all vicarial tithes arising therein; that the defendant had been, for one year last past, an inhabitant and occupier of lands in the parish; that he had had turnips thereon, which he had severed and carried away, without setting out the tithe in kind, or making the plaintiff any satisfaction for the same; that he had also kept on his said lands cows, which had yielded milk, and sheep, which had produced wool; and that he had had several other titheable matters of considerable value, the tithes of which ought to have been rendered to the plaintiff in kind, or some satisfaction made to him in lieu thereof; but that the defendant had refused so to do. The bill therefore prayed payment of the said tithes.

The vicar of  
*Framden*, in  
*Suffolk*, claims  
the tithes of tur-  
nips, milk, wool,  
calves, sheep,  
and lambs.

The defendant admitted, that the plaintiff was vicar of *Framden*, and, as such, entitled to the vicarial tithes; and that, for one year past, he had been an inhabitant or occupier of lands therein, and also of certain glebe land, as tenant to the plaintiff, free from the payment of tithes; and he said, that he had paid the plaintiff all his tithes to the tenth of *October* 1765; that the plaintiff had agreed to accept, and was paid by him, four pounds, seventeen shillings, in lieu of all tithes from the tenth of *October* 1764 to the tenth of *October* 1765, and had given him a receipt for the same; that from the said tenth of *October* 1765 he had growing on his said lands some turnips, which he severed and gave to his cattle, the tithes of which were first set out for the plaintiff by throwing out the tenth turnip, but which the plaintiff refused to take away, they not being set in heaps; and that he suffered greatly thereby in his crop of barley which succeeded his turnips. He also said, that during the said time he had fed and depastured upon his lands cows, but what particular quantity of milk such cows had yielded he could not tell, the said cows frequently

The defendant  
says, that he paid  
all his tithes to  
the 10th *October*  
1765;

that he set out  
the tithes of tur-  
nips by every  
tenth turnip;

BEAUMONT  
against  
SHILCOT.

that he had fed  
his cows on tur-  
nips, hay, and  
stover, the tithes  
of which had  
been paid;

that he had no  
sheep; that his  
lambs were fed  
on glebe lands  
rented of the  
plaintiff tithe  
free;

that he had  
shorn his lambs;

frequently calving, and he having kept no account thereof, conceiving that the plaintiff would have accepted a composition for the same as he had done before; and he denied that he had ever refused to set out the tithes thereof in kind, or to make the plaintiff a satisfaction for the same. He also said, that during that time he had kept on his lands and grounds several cows, the tithes whereof he had rendered to the plaintiff in kind until the said cows were fed on turnips, hay, and stover, for all which tithes had before been paid. He also said, that he had given the plaintiff notice, when he turned his cows out to grass, to send for his tithe milk; that he did not send for it, and therefore he thought he meant to accept a composition for the same. He also said, that during the said time he had not kept on his said farm any sheep; but that about the month of *August* he bought in some lambs, and put them on his glebe lands to feed, where they continued until the tenth of *October*, when they were removed to his other lands; and that about four days after he had bought such lambs, he caused them to be shorn, and sold the wool for ten shillings and sixpence; and he denied that he had fed or kept on his said lands any other sheep or lambs. He also said, that as to all other titheable matters and things which he had on his said farm and lands during the said time (except the glebe lands) he had paid to the plaintiff the tithes thereof in kind. He admitted, that the plaintiff had applied to him for his said tithes, and that they had been in treaty to compound for the same, but that the plaintiff's demands were so exorbitant and unreasonable, he could not prudently comply therewith.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and now upon hearing counsel; and reading the depositions of several witnesses; and on debate of the matter;

The tithes of  
milk and lambs  
wool decreed,  
and the bill as to  
the other mat-  
ters dismissed.

THE COURT ordered the defendant to pay to the plaintiff the sum of three pounds for the tithe of his milk for all such time as he had refused to render an account thereof, or pay the same in kind whilst his cows fed upon hay, stover, and turnips, between the tenth day of *October* 1765 and the tenth day of *October* 1766; AND ALSO one shilling for the tithe of his wool for the year; together with the said plaintiff's taxed costs of this suit, so far as related to those matters; and that the bill as to all other matters (except milk and wool) be dismissed with costs.

PARKER, Chief Baron.  
SMYTHE, Baron.  
ADAMS, Baron.

GALE

GALE *against* CARPENTER.TRIN. TERM,  
8. GEO. 3.*Wiltshire, 6th June 1768.*

THE bill stated, that *J. Melhuish* being seised of and entitled to the tithes of corn, grain, hay, and all other great and rectorial tithes yearly arising within the villages, fields, precincts, and tithings of *Corston* and *Rodborn*, parcel of and within the rectory of *Saint Paul*, in *Malmesbury*, in the county of *Wiltshire*, did, by indenture dated the first of *January 1766*, demise to the plaintiff all the tithes and profits of corn and grain growing within the tithings and villages of *Corston* and *Rodborn*, to hold to him, &c. for one year; and that, by virtue of the said lease, he had become entitled to the said tithes during the said term; that the defendants living within the said villages and tithings had, during the said year, occupied divers fields and arable land in the said tithings, from which they had cut and reaped wheat, barley, oats, and pease, the tithes in kind of which they ought to have regularly set out, or made a reasonable compensation for; but that they had refused so to do. The bill therefore prayed an account and payment.

The lessee of the tithes of the parish of *Saint Paul*, in the town of *Malmesbury*, in *Wiltshire*, claims the tithes of the hamlets of *Corston* and *Rodborn* in kind.

The defendant *Carpenter* denied that he knew that *John Melhuish* was seised of and entitled to the tithes as mentioned in the bill, or that the plaintiff had become entitled thereto by virtue of the lease. He said, that he was informed that the parish of *Saint Paul* was divided into or consisted of three separate tithings, viz. *Malmesbury*, *Corston*, and *Rodborn*. He admitted, that he lived within the village or tithing of *Corston*; that in the year 1766 he occupied the several fields as stated in the bill; and that he had cut and reaped therefrom wheat, barley, and oats, the quantities and values of which he set forth, and acknowledged that he had refused to pay the tithes thereof, for that there was, and for time immemorial had been, a *modus* or certain customary payment of two shillings paid and payable by the occupiers of *inclosed arable lands* lying within *Corston Tithing* to the owners or impropiators of the great tithes of the said tithing, their farmers or lessees, in lieu of the tithes of every acre of such arable land when sown with corn or grain; and that such *modus* was, and of right ought to be paid and payable on the tenth day of *October* in each year, when such inclosed arable lands were so sown with corn or grain. He also insisted, that there was, and for time immemorial had been, a *modus* or certain customary payment of one shilling and sixpence paid and payable by the occupiers of *common field arable lands* lying in *Corston Tithing* to the owners or impropiators of the great tithes of the said tithing, their farmers or lessees, in lieu of the tithes of every acre of such common field arable lands when sown with corn or grain; and that such *modus* was, and of right ought to be

The defendant says, there is a *modus* in the said hamlets of 2s. an acre in lieu of the tithe of all grain reaped from the inclosed arable lands therein, and 1s. 6d. an acre for the tithes of the grain reaped on the common field arable lands.



GALE  
against  
CARPENTER.

be paid and payable on the said tenth of *October* in each year the same were so sown with corn or grain.

The defendant *Kaynes*, who occupied lands in the tithing of *Rodborn*, put in his answer to the same effect.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides; and the defendants counsel objecting to the plaintiff's title, and the Court over-ruling the objection; and on reading a lease from *J. Melhuish*, dated the first of *January* 1766; and the will of *Susannah Bromwich*;

The Court of opinion, that the *modus*es are too rank, and decree the payment of tithes in kind.

THE COURT were of opinion, that the *modus*es of two shillings an acre for corn on inclosed lands, and one shilling and sixpence an acre for corn on common field lands, were too rank; and thereupon ordered the deputy remembrancer to take an account of what was due from the defendants respectively for the tithes demanded by the bill; the defendants to pay the plaintiff the costs of this suit to be taxed.

PARKER, Chief Baron.  
SMYTHE, Baron.  
ADAMS, Baron.  
PERROTT, Baron.

TRIN. TERM,  
8 GEO. 3.

BOSCAWEN, D. D. against ROBERTS.

*Cornwall*, 4th July 1768.

The dean of *Burian*, in *Cornwall*, claims the great and small tithes of the parishes of *Saint Levan* and *Saint Sinnen*, in the said deanery, in kind.

THE plaintiff, as dean and rector of the free chapel and church of *Saint Borian*, otherwise *Burian*, in the county of *Cornwall*, stated, by his bill, that by letters patent under THE GREAT SEAL, bearing date the eighth of *December*, in the thirtieth year of *George the Second*, his said majesty did give and grant to him the said deanery and rectory, and did ordain and appoint him dean and rector thereof; that by virtue of the said letters patent he took possession thereof, and thereby became entitled to the tithes of all titheable matters and things yearly arising therein, or to some composition for the same; that the defendants *Hodge* and *Roberts* had, during several years past, occupied divers messuages, lands, and gardens, within the parish of *Saint Levan*; that the defendants *Williams* and *Frere* had also occupied the like within the parish of *Sinnen*; that both the said parishes are within and part of the said deanery and rectory; that they had yearly fed thereon several cows, from which they had milk, and had growing on their said lands yearly potatoes, hemp, turnips, and garden stuff; that they had also agisted a number of barren cattle, cows, and swine, from which they had yearly calves and pigs; that they had also fed several sheep, which produced lambs and

and wool; that they also had poultry and bees, from which they had chickens, eggs, and honey; that they also had yearly on their said lands great quantities of other titheable matters and things, the tithes of all which were of considerable value yearly, and ought to have been set out to the plaintiff, or some pecuniary recompence made in lieu thereof; but that the defendants had severally subtracted the said tithes, and refused to pay or make any satisfaction for the same. The bill further stated, that the defendants had paid the plaintiff their great tithes, but had refused to set out their small tithes; and prayed a discovery, an account, and payment.

BOSCAWEN  
against  
ROBERTS.

The defendants *Roberts* and *Hodge* admitted the plaintiff's title, and that they were inhabitants in *Saint Levan*, within the said deanery and rectory; and averred, that they had duly paid for or set out their *great tithes* ever since the plaintiff became entitled thereto; but that, as to small tithes, that there was, and for time out of mind had been, a certain customary yearly payment of one shilling at *Michaelmas* in every year, by every occupier of lands within the said parish of *Saint Levan* to the said dean or rector for the time being, for every fat bullock agisted within the said parish, in lieu of the tithes of agistment of barren and unprofitable cattle agisted upon lands within the said parish; another customary yearly payment of sixpence for every cow depastured within the said parish, at *Michaelmas* yearly, to the said dean and rector, for and in lieu of tithes of milk and calves; and the several ancient customary yearly payments for and in lieu of the several titheable matters following, that is to say, for every lamb yeaned within the said parish, twopence, in lieu of the tithe thereof; one penny for every fleece of wool shorn from every sheep fed and depastured therein, for and in lieu of the tithe of such wool yearly renewing therein; twopence for every colt foaled; fourpence for every garden, in lieu of garden stuff; fourpence for potatoes tilled in a ridge in the field for family use and not for sale; one penny for any small quantity of hemp sown every year by every occupier of lands within the said parish; which several customary payments were due and payable at *Michaelmas* in every year; and also that, for time beyond memory, twopence was due and payable, at *Easter* in every year, for every inhabitant of the age of sixteen years and upwards. They also said, that they knew not that any tithes had ever been paid for hens, ducks, ducklings, chickens, turnips, or any kind of garden stuff, or any other tithes, except for honey, pigs, and geese, which had been taken and paid in kind for the most part when they amounted to a titheable number, but that when they fell short of that there was a customary payment of one penny for every pig and three halfpence for every goose paid and payable at *Michaelmas* yearly within the said parish, for and in lieu of the tithe of pigs and geese which did not amount to such titheable number as aforesaid.

The defendants say, that they had paid the great tithes; and that as to small tithes there are the following *modus*es:

1s. a-year for every bullock agisted, in lieu of agistment tithes of all barren and unprofitable cattle;

6d. yearly for every cow, in lieu of tithe milk and calves;

2d. a lamb; 1d. a fleece; 2d. a colt; 4d. a garden; 4d. for potatoes ridged for private use;

1d. for any small quantity of hemp;

2d. for *Easter* offerings;

nothing for poultry;

honey, pigs, and geese in kind, except under ten, and then 1d. a pig and 1½d. a goose.

The

BOSCAWEN  
against  
ROBERTS.

The same *modus* insisted on  
in the parish of  
St. Sinnen.

The defendants *Williams* and *Frere* also admitted the plaintiff's right under the said letters patent to the said deanery and rectory, and to all great and small tithes accustomed to be paid, or to such ancient customary payments as had been paid time out of mind; and after stating that they had paid all their great tithes since they had been inhabitants of *Sinnen*, they insisted on the said *modus* as stated in the other defendants answer, and put in the like answer.

The cause  
heard.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel; and reading the proofs taken in the cause; and on debate of the matter;

The *modus* as  
to bullocks and  
hemp declared  
to be illegal and  
void.

THE COURT declared, that the *modus* of one shilling for every fat bullock agisted within the said several parishes, in lieu of the tithes of agistment of all barren and unprofitable cattle agisted upon lands within the said parish; and the *modus* of one penny for any small quantity of hemp sown within the said several parishes are severally bad in point of law; and ordered the deputy remembrancer to take an account of what was due to the plaintiff from the defendants respectively for the tithe of agistment of all barren and unprofitable cattle fed and agisted by the defendants on the lands by them respectively occupied within the said several parishes; and also for the tithe of hemp which had grown on their said lands respectively from the commencement of the time in the bill mentioned; and also to take an account of what was due to the plaintiff from the defendants respectively for the several other *modus*es in their said several answers mentioned, according to the said *modus*es, during the time aforesaid; and that the said several accounts should be taken with costs of this suit to the time of filing the replication; the said costs to be taxed by the said deputy remembrancer: and to be paid by the defendants to the plaintiff.

The other *modus*es directed to  
be received.

Costs.

But as the plaintiff had proceeded to the examination of witnesses upon the whole of his case without accepting the *modus*es last above mentioned, which were tendered to him by the defendants in their answers, and which had been by them proved in evidence in this cause in their favour, IT WAS ORDERED, that there should be no costs received or paid on either side in respect to such examination, and the depositions of witnesses taken thereupon, and to every other expence incurred in consequence of such examination.

PARKER, Chief Baron.  
SMYTHE, Baron.  
ADAMS, Baron.  
PERROTT, Baron.

BOOTH



BOOTH *against* SAXON.TRIN. TERM,  
8. GEO. 3.*Lancashire, 4th July 1768.*

THE plaintiff, as rector of the parish of *Ashton Underline*, in the county of *Lancaster*, claimed the tithes of corn, grain, hay, potatoes, apples, eggs, milk, herbage, agistment, and all other titheable matters, oblations, obventions, *Easter* offerings, profits, and advantages thereto belonging, from *Michaelmas Day 1758*.

The rector of *Ashton Underline*, in *Lancashire*, is entitled to the great and small tithes of the parish in kind.

The defendant admitted, that the plaintiff was rector of *Ashton Underline*, and that, from *Michaelmas 1758* to the present time, he had occupied a tenement and lands therein; that he also owned other messuages and lands, which were in the occupation of his undertenants; that the plaintiff, as rector, was entitled to the tithe of corn and grain in kind, and to the tithe of hay in kind on certain parts of a tenement called *the Oldhall*, or *the Demesne of Ashton*. But he denied, that he had any right to take the tithes of the several other articles mentioned in the bill in kind, for that the several sums of money following were yearly payable at *Easter* as *modus* for the said several other titheable matters, viz. for every cow and calf under five, three halfpence, that is to say, one penny for each cow, and for each calf one halfpenny; for five cows and five calves, five shillings; and the same sum till the number of cows and calves amounted to seven; for seven cows and seven calves, and for any greater number, ten shillings; and that the said several sums of five shillings and ten shillings severally extended to cover the tithe agistment for all barren and unprofitable neat cattle kept and depastured by any occupier of lands within the said parish. For every house and garden, one penny: for tithe hay, one penny: for every farm and cottage, and for every man above the age of twenty-one years, whether bachelor, husband, or widower, twopence; for every married or widow woman, twopence; for every child above the age of sixteen, one halfpenny, as and for *Easter* offerings. The defendant further stated, that in the said years he had reaped a quantity of corn and had had other titheable matters from the tenement in his own occupation; that he had carried the same away, without setting out the tithe thereof in kind, he having paid the plaintiff, during the first seven years of his incumbency, a composition for the same and *Easter* offerings two pounds, ten shillings, and which sum he had paid the former rectors; that he agreed to pay the plaintiff afterwards two pounds, five shillings annually, for seven years, in lieu of his tithes of corn and grain; and that the said seven years did not expire until the thirty-first of *December* instant. He further said, that ever since the plaintiff's incumbency he had paid him the several sums of

See Booth v. Wright, post. 18th June 1770, Trinity Term, 10. Geo. 3.

BROTH  
against  
SAXON.

money before mentioned, according to the rates aforesaid, in lieu of tithes, and as a *modus decimandi*; which sums were, and had been immemorially, received and accepted of by all former rectors for and in respect thereof. He also said, that he had not in any of the said years any potatoes or apples, excepting those which grew in his garden and were used in his family, and therefore could not set forth the quantities thereof, no tithe having ever been demanded for the same: and he set forth his other titheable matters, but not the quantities. He admitted, that the plaintiff had applied to him to set out the tithe hay, but of no other tithes whatsoever, save by the bill; and that he refused the same for the reasons and grounds aforesaid.

After the coming in of the above answer, on the twenty-eighth of February 1768, the defendant obtained an order for his paying into court two pounds, six shillings, being the amount or value of the tithes demanded by the bill, with the said plaintiff's costs to that time; and that in case the plaintiff did not accept thereof, he was to proceed in the cause on peril of costs.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and now upon hearing counsel; and reading the proofs in the cause;

THE COURT ordered the deputy remembrancer to take an account of all the titheable matters and things demanded by the bill, except *Easter* offerings only; and the defendants to pay the plaintiff the values thereof, together with costs of this suit, except as to *Easter* offerings; and that the bill as to *Easter* offerings be dismissed with costs.

THE COURT FULL.

MICH. TERM,  
9. GEO. 3.

BARBER against ELLIOT.

Dorsetshire, 14th November 1768.

The rector of *Aishmore*, in *Dorsetshire*, insists on tithes in kind.

The defendant says, that he purchased his estate of the plaintiff's brother, who had a lease of the tithes thereof then unexpired; and that he is equitably entitled to the benefit of

THE plaintiff, as rector of *Aishmore*, in the county of *Dorset*, claimed all the rectorial and vicarial tithes which had arisen therein since the year 1734.

The defendant said, that in September 1765 he entered upon the messuage, farm, and demesne lands, as in the bill mentioned; that they had been before in the occupation of the plaintiff's brother; and he set forth and described the lands, as also the quantities, qualities, and values of the titheable matters which had arisen thereon: and he insisted, that every inhabitant annually paid one penny in lieu of the tithes of gardens, according to custom from time immemorial used; that the plaintiff or his lessee had received the tithes for the underwood growing on the said lease, although it had not been assigned to him;

the

BARBER  
against  
ELLIOT.

the said farm ; and that he had no other titheable matters than those in his answer set forth. The answer further stated, that by indenture of lease, dated the eleventh of *November* 1734, the plaintiff demised to his brother all the tithes of his said farm, except the tithes of wood, to hold for their joint lives, at thirty pounds a-year, subject to the payment of a quarter's tithes for every acre of the *Downs* which should be broke up or sown more than were usually broke up or sown ; that since the granting of such lease, he, the defendant, had purchased the said farm, but that the said lease was not assigned to him ; and he admitted, that he had not at any time tendered any such sum of money as in the said lease is mentioned to the said plaintiff in lieu of tithes ; and that the plaintiff had applied to him to set out the tithes in kind, but that he did not set them out, because he was religiously persuaded in his judgment, that it was not lawful for him to pay tithes, seeing that the *Lord Jesus Christ* by his coming in the flesh and the sacrifice of himself had put an end to tithes and the levetical priesthood, and when he sent forth his disciples to preach the gospel he said unto them, *Freely ye have received, freely give* : and he affirmed, that he had refused to answer the several tithes which in the said two years had arisen on the said farm and lands so occupied by him, or to give the plaintiff any satisfaction for the same. He further affirmed, that he did not set up or pretend to set up any *modus* or exemption from the payment of such tithes ; and that he had not tendered any *modus* or composition, nor set up any agreement for that purpose ; and he set forth the lease *verbatim*. He also said, that being one of the people called *quakers*, he had a conscientious scruple against paying of tithe, or any composition or rent in lieu thereof, and that for that reason only he had refused to permit the plaintiff's brother to execute an assignment of the said lease, which he proposed to do at the time he executed the conveyance. He also said, that by the said lease it appeared that the said tithes were demised not only to the plaintiff's brother, but to his executors, &c. and that therefore he did not believe it was intended between them that the said lease should not be assigned ; and he admitted, that he did not tender to the plaintiff the said annual sum of thirty pounds ; but he said, that he had a legal right to the benefit of the said lease, but that forasmuch as he could not, for conscience sake, pay the said rent to the plaintiff, he did not set up the said lease, but did renounce and disclaim any benefit which could accrue to him by virtue thereof.

that he is one of the people called *quakers* ; and that the reason why he did not pay the plaintiff the rent of the said lease in lieu of tithes, was, that he was religiously persuaded that the payment of tithes is repugnant to the doctrines of christianity ;

and that as he cannot pay tithes with a safe conscience, he is obliged to renounce the benefits of the said lease.

The plaintiff replied ; the defendant rejoined ; but no witnesses were examined on either side ; and upon hearing counsel ; and reading the answer ; and upon full consideration had thereon ;



**HARDER**  
against  
**ELLIS.**

The tithes decreed.

THE COURT ordered the deputy remembrancer to take an account of all the titheable matters and things demanded of the defendant by the bill, and report the same to the court; and that the defendant do pay to the plaintiff his taxed costs of this suit, &c.

In pursuance of the said decree, the deputy made his report, dated the twenty-eighth of *February* 1769; and upon reading the said decree and report, THE COURT, on the twentieth of *April* 1769, ordered the said report to be ratified and confirmed, with subsequent costs; and that the defendant do forthwith pay to the plaintiff one hundred and forty-nine pounds, nineteen shillings, and sevenpence halfpenny for his tithes, and thirty-one pounds, one shilling, and fourpence for his costs already taxed, together with his subsequent costs when taxed.

**MICH. TERM,**  
**9. GEO. 3.**

**TODDINGTON against YOUNG.**

*Lincolnshire, 2<sup>th</sup> November 1768.*

The rector of *Thornton le Moor*, in *Lincolnshire*, is entitled to the great and small tithes of the parish in kind.

THE bill stated, that the plaintiff, ever since the fifth of *January* 1765, had been lawful rector of *Thornton le Moor*, in the county of *Lincoln*, and entitled to the great and small tithes arising therein, particularly to the tithes of corn, grain, hay, wool, lambs, milk, calves, pigs, turkeys, geese, poultry, eggs, agistment of unprofitable cattle, and all dues, offerings, duties, oblations, and obventions arising therein; that the defendants respectively, during all the said time, had occupied lands, and had arising thereon the several species of tithes aforesaid, which they ought to have paid to the plaintiff in kind, or something in lieu thereof, but which they had refused to do, on pretence that the said lands were exempt from the payment of tithes, or that some *modus* was payable in lieu thereof; both which the plaintiff denied, and prayed, that the defendants might respectively account for the *single value* of all such titheable matters aforesaid, and pay him what should appear to be due.

The defendants admitted, that the plaintiff was rector of the parish; but denied, that he was entitled to the tithes in kind of any titheable matters arising therein; for that a certain *composition* had been constantly paid and accepted by the rector there in lieu of the tithes in kind, both great and small, for all the lands within the said rectory; and that for time immemorial until within forty years last past, the occupiers of the said lands had been accustomed to pay the rector yearly, at *Lady Day*, one eighth in the pound rent, as a compensation for and in lieu of all tithes whatsoever arising in or upon the said lands; that the rector for the time being had constantly accepted of the said *composition* in full satisfaction of all such tithes; but that since that time

it

it had been changed to two shillings in the pound by some contrivance of a former rector ; that the plaintiff had received the same until the thirteenth of *February* 1765 ; and therefore they insisted, that such yearly payment ought to be accepted of as a full discharge from the payment of all manner of tithes whatever arising on the lands and tenements by them held and enjoyed in the parish.

TODDINGTON  
against  
YOUNG.

The plaintiff replied ; the defendants rejoined ; but no witnesses were examined on either side ; and upon hearing counsel for the plaintiff, no counsel appearing for the defendants ; and upon reading an order, dated the twenty-second of *June* last, whereby they undertook to appear *gratis* ; and the bill and answer ;

THE COURT ordered the several defendants to account for all and singular the several titheable matters and things demanded by the said bill, unless cause were shewn to the contrary ; and on the twenty-sixth of *January* 1769, upon reading the said decree, and no counsel appearing for the defendants, the said decretal order was made absolute.

THE COURT FULL.

SAWREY against COLLINS.

MICH. TERM,  
9. GEO. 3.

*Staffordshire and Warwickshire, 24th November 1768.*

THE bill stated, that before the act of parliament after-mentioned there was founded in the parish church of *Tamworth*, in the county of *Stafford*, A COLLEGIATE CHURCH, consisting of one dean, five prebends, and one lay vicar choral ; that the said dean and prebendaries were parson of the whole parish of *Tamworth* ; that by an act of parliament made in the first year of *Edward the Sixth*, all colleges, with their lands and possessions, were vested in THE CROWN, and the said king thereby empowered to issue a commission to enquire into their possessions, to make vicars, and to endow vicarages in every parish church, which were to continue for ever ; that by the said statute the college of *Tamworth*, and the right of patronage of the said church, became vested in THE CROWN ; that the commissioners, named in the commission issued in pursuance of the said act, appointed a salary of twenty pounds a year to the vicar of *Tamworth*, and another of sixteen pounds a-year to two priests to assist the vicar or curate of *Tamworth*, to be paid out of the possessions of the said college ; and that a mansion-house and garden in *Tamworth*, part of such possessions, were assigned for the habitation and as part of the endowment of such vicar ; that the said college, deanery, and right of patronage, and the possessions of the said college, except the said house and garden so assigned for the habitation of the vicar of the said church

The bill stated, that the dean and prebendaries of the collegiate church of *Tamworth* were parson of the parish of *Tamworth* ; S. C 6 Bro. P. C. 459.

that by the statute 1 *Edw. 6. c. 14.* the said church was vested in the crown ; that a perpetual vicarage was created, and 20l. a year allowed to the vicar, together with the vicarage-house, and 16l. a year to two chaplains to assist him ;

SAWARY  
against  
COLLINS.

that *Queen Elizabeth* granted the said college, right of patronage, and tithes to *Downing*; reserving thereout the said salaries; that *Downing* conveyed the same to *Morley*; that *Morley* granted the same to *Thomas Repington*; that *Thomas* conveyed it to *John Repington*, who, on the resignation of the vicar, appointed *Hodgkinson*;

*Hodgkinson* resigns, and *Repington's* son appoints *Blake*; *Langley* appointed; *Collins* appointed;

*Antrobus* appointed;

the college, &c. comes into the hands of *Edward Repington*, who appoints the plaintiff.

as aforesaid, descended to *Queen Elizabeth* in right of her crown; that *Queen Elizabeth*, by letters patent dated the twenty-seventh of *October*, in the twenty-third year of her reign, granted the same, with all the tithes in *Tamworth* great and small, except as before excepted, to *E. Downing* and *P. Asbeton*, and their heirs and assigns for ever, under the reservation, amongst other things, of the sum of twenty pounds payable thereout yearly to the vicar of *Tamworth*, and of sixteen pounds payable thereout yearly to two curates there; that by indenture, dated the twenty-first of *February*, in the twenty-fifth year of the said queen, they granted the said premises, except as aforesaid, to *John Morley* and *R. Grant* in fee; that they, by indenture dated the tenth of *May* following, granted the same to *Thomas Repington* in fee, whereby he became seised in fee simple of the said college, prebends, deanery, advowson, and right of patronage; that *Thomas Repington*, by indenture of settlement, dated the second of *November*, in the first year of *James the First*, covenanted to stand and be seised thereof to the use of *John Repington* his son and *Margaret* his wife, and their heirs male, in special tail, remainder to *Humphrey* his second son in tail male, with divers remainders over; that the said *John Repington*, by deed dated the twenty-eighth of *August*, in the seventh year of *James the First*, nominated *S. Hodgkinson* to be vicar of *Tamworth*, on the resignation of *Roger Molde*, who had been appointed by *Queen Elizabeth* in the twentieth year of her reign; that the said *John Repington* dying in 1625, *Sir John Repington* his son and heir, on the cession of the said *Samuel Hodgkinson*, by indenture dated the twelfth of *November* 1629, nominated *Thomas Blake* to the said vicarage; that by indenture, dated the seventeenth of *December* 1662, *Seabright Repington*, son and heir of the said *Sir John Repington*, who was then dead, nominated *Samuel Langley* to the said vicarage, and on his death, by indenture dated the nineteenth of *June* 1694, nominated *Samuel Collins* to the said vicarage, who dying in 1710, *Edward Repington*, eldest son and heir of the said *Seabright Repington*, who was then dead, by indenture dated the eighth of *January* 1710, nominated *George Antrobus* to the said vicarage, who during his life received the said salary of twenty pounds a-year reserved and payable to the said vicar, and also the said salary of sixteen pounds reserved and payable yearly to the said two priests or curates under the denomination of "the salary of the curate of *Tamworth*," with all other stipends and benefactions given from time to time to the ministers and curates of the said church; that he, in right of the said vicarage, also occupied the said mansion-house, garden, and appurtenances, till his death, as all his predecessors had regularly done from the time of the said endowment; that the said *Edward Repington*, by another indenture dated the twenty-ninth of *December* 1724, nominated *Robert Wilson* to the said vicarage, then void by the death



death of the said *George Antrobus*; that the said *Wilson* constantly received the said salaries and benefactions; that *Edward Repington*, nephew and heir of the said *Edward*, being entitled, under divers family settlements, to the right of patronage of the said vicarage, by an instrument under his hand and seal, dated the first of November 1758, addressed to the then *Bishop of Litchfield and Coventry*, reciting, that the parish church of *Tamworth*, with the perpetual curacy, was then void by the said *Robert Wilson's* death, did certify, that he had nominated THE PLAINTIFF to the said perpetual curacy, and prayed the said bishop to grant him his licence to officiate in the said church. The bill then stated, that the defendants the guardians and governors of *Tamworth School* having, on the said *Robert Wilson's* death, pretended a right to nominate to the said vicarage, the said *Edward Repington* entered a caveat with the bishop against granting a licence to any one nominated by them; that the said *Edward Repington* died in 1759, leaving *Charles Repington*, his brother and heir at law, he having first made his will, and appointed the said *Charles Repington* executor thereof, who proved the same; that the said *Charles Repington* executed an indenture, dated the fifth of May 1759, whereby, reciting that the said vicarage, with the perpetual curacy, was void by the said *Robert Wilson's* death, he did grant the same to THE PLAINTIFF, and nominated him to be vicar and curate thereof; that he at the same time executed another deed of the same date, reciting such vacancy in the life-time of the said *Edward Repington*, and that he, the said *Edward*, had appointed the said *Charles* executor of his will, who had proved it; that it then belonged to him the said *Charles Repington* to present a proper clerk in the room of the said *Wilson*, by which other deed he gave and granted the said parish church and curacy to THE PLAINTIFF; that on the same fifth of May 1759, the said *Charles Repington* being informed by the defendant *Collins* that he claimed to be incumbent on the nomination of the said governors and guardians, gave notice to them and to the said *Collins* that he had nominated the plaintiff, and required the said *Collins* to deliver up possession to him, which being refused, he the said *Charles Repington*, in *Easter Term* 1759, sued out a *quare impedit* against the said guardians and governors and the said *S. Collins*, and three several issues were tried at *Stafford* assizes, in *August* 1761, and a verdict on all found for the plaintiff; that afterwards the said plaintiff, with the consent of his said patron, entered into possession of the said church, and preached therein on the twenty-fifth day of *October* 1761, and by himself and his curates duly licensed by the bishop had from that time hitherto performed divine service in the said church and in *Wilnecote Chapel* in the said parish according to the rubric and canons, for part of which service the plaintiff had paid his curates from time to time at the rate of forty pounds a year from his said entry on the said

SAWREY  
against  
COLLINS.

The guardians  
of *Tamworth*  
*School* pretend a  
right to nomi-  
nate to the said  
vicarage.

*Charles Repington*  
grants the vicar-  
age to the plain-  
tiff,

and gives notice  
thereof to *Col-  
lins*, who had  
been appointed  
by the guardians  
of *Tamworth*  
*School*.

*Charles Repington*  
sues a *quare im-  
pedit*, and obtains  
a verdict,

**SAWNEY**  
**against**  
**COLLINS.**

and brings an ejection against *Collins* to get possession of the vicarage house; but a verdict is found for *Collins*.

church until the *Michaelmas* 1763; that the defendant *Collins* being in possession of the vicarage house, and refusing to deliver up the same, the plaintiff, in *Michaelmas Term* 1761, commenced an action of ejection against him on his own demise to recover possession of the said house, and that the same was tried at *Warwick* assizes, when a verdict was found for the defendant *Collins*, who now pretends that the said church is lapsed to the bishop; that to obviate any pretence of lapse, the said *Charles Repington* had, since the said trial, executed several deeds, whereby he nominated the plaintiff to the said curacy as a perpetual curacy; whereupon the plaintiff had attended the bishop, and prayed his licence as such. The plaintiff then insisted on the grant in prior letters patent of the twenty-third year of *Queen Elizabeth* to the defendant's grant of the thirtieth year of the said queen, which they set up their claim upon; and that after such grant so made, no right of patronage remained in the crown, so as to enable the said queen to make such pretended subsequent grant. The bill also charged, that they had never received such stipends, and that no preacher or curate nominated by them ever enjoyed the said house and garden; and that, on the contrary, the persons nominated by the *Repington* family had been such vicars, preachers, and curate, and had received the said stipends, and enjoyed the said house and garden; and that those under whom the *Repingtons* claimed were real purchasers of the said premises from the crown for a valuable consideration; and that their grant and title was prior to the pretended title of the defendants, whose grant was merely voluntary, without any consideration paid for the same. It also charged, that no augmentation of the said vicarage had been made, nor any consent of the said *Edward Repington* or other true patron given thereto; and that the value of the preacher'ship and curacy amounted to thirty-six pounds *per annum*; that the same were not capable of one joint augmentation; and that no augmentation of the curacy of sixteen pounds a-year, with or without the patron's consent, could alter the nature of the said donative vicarage, or subject it to episcopal jurisdiction, or in any manner affect the said *Charles Repington's* claim to the right of the patronage of the said vicarage and curacy. The plaintiff also charged, that the name of vicar or curate had been promiscuously used from the time of the dissolution of the college; that the defendant *Collins* had refused to come to an account with the plaintiff touching the monies so received by him, or to deliver up possession of the said house and garden; that the defendant *Charles Repington* refused to join with the plaintiff in establishing his said right of patronage; and that the bishop had refused to licence the said plaintiff. The bill therefore prayed, that the defendant *Collins* might be decreed to come to an account with the plaintiff for all the monies received by him as aforesaid, and for the rents and profits of the said lands, estates, and other benefactions which had been paid to or received by him,

him, and to pay what should appear due on such account; that he might deliver up the possession of the said vicarage house and lands; that the plaintiff might be quieted in the possession thereof; that the parish registers and other papers in the custody of the said *Collins* might be by him delivered up to the said plaintiff; that the right of patronage and nomination to the said vicarage and curacy (in case the said guardians and governors shall pretend title thereto) may be tried in proper issues to be directed by the court; that on such trial the defendant *Charles Repington* might be decreed to produce the said letters patent, and all other deeds and papers which manifest his right to such patronage, and to support the plaintiff's nomination to the said vicarage and curacy; that in the mean time until such trial could be had, a receiver might be appointed by the Court to receive the said several stipends, rents, and other profits of the said church for the benefit of the party who shall appear legally entitled thereto; that the said bishop, if the same be necessary, be decreed to grant his licence to the plaintiff, or to admit him to preach and perform divine service in the said church; that if he had already licensed the defendant *Collins*, he might be decreed to recall the same; and that he might be restrained from licensing or admitting any other person except the plaintiff.

SAWREY  
against  
COLLINS.

The defendant *Collins* demurred to such parts of the bill as prayed an account from him of the stipends and rents and other profits received by him, or that prayed him to deliver up possession to the plaintiff, and that the plaintiff should be quieted in such possession; or that prayed issues to try the right of patronage; for that the plaintiff's right, if any he had, was triable only at law. But the said demurrer was, on the arguing thereof, over-ruled by the Court.

The defendant *Collins*, by his answer, admitted, that the church of *Tamworth* was formerly a college founded by *King Edgar*, consisting of a dean, five prebends, and one lay vicar choral; that the dean and prebendaries were jointly parson of the parish, and as such entitled to a certain old house now down, and to all the tithes of the parish; that at the time of the dissolution of the said college, there was a mansion-house and garden for the priests and their successors to reside in; but he denied, that there was any vicarage there, as pretended by the bill; or that there ever was any vicar properly so called, having cure of souls, with endowment of any of the possessions of the said college either before or since its dissolution. He admitted the act of parliament of the first year of *Edward the Sixth*; but submitted, that neither under that act, or otherwise, any right to the advowson of a vicarage properly so called, with endowment and cure of souls, came to the crown, as no

The defendant  
*Collins* says,

that as no vicarage pre-existed, the 1. *Edw. 6. c. 14.* could not vest a vicarage in the crown;

such



SAWNEY  
against  
COLLINS.

that the college  
never had a right  
to appoint a  
preacher ;

that there was  
no vicarage-  
house ;

that the grant by  
*Queen Elizabeth*  
to *Downing* pas-  
sed no right of  
patronage ;

that nothing  
passed to *Re-  
pington* but what  
belonged to the  
college ;

that the appoint-  
ment of *Walker*  
and his prede-  
cessors was con-  
sistent with the  
grant to *Tam-  
worth School* ;

that the appoint-  
ment of *Langley*  
was collusive ;

that the plain-  
tiff's appoint-  
ment was collu-  
sive ;

that *Queen Anne*  
augmented the  
church and thereby changed it from a *donative vicarage* into a *perpetual curacy* ;

such vicarage existed before. He also admitted, that such com-  
mission issued pursuant to the said act, and that such certificate  
was made thereon as is described in the bill ; but denied that,  
to his knowledge, any salary was thereby appointed for a vicar  
of the said church or such officer. He said, that he believed  
that no nomination of a preacher or curates was ever any part  
of such college, but that it took its rise from the commissioners  
assignment belonging to the crown, out of whose estates their  
stipends were to be paid ; and that the commissioners had no  
power to appoint who should nominate to the said places, or to  
take such appointment out of the hands of the crown. He  
further said, that he believed that the house in the bill men-  
tioned was never, till lately, called *the Vicarage House* ; that it  
was no part of the ancient college, but was for the use of the  
vicar choral or stipendiary priests ; and that it paid a *modus*  
in lieu of tithes. He admitted the letters patent of the twenty-  
third year of *Queen Elizabeth* to *Downing* and *Asbeton* ; but  
insisted, that the said letters patent did not pass more than the  
deanery and prebends and the possessions of the college ;  
and that no right of patronage or advowson of a vicarage passed  
thereby, because there was never any such ; nor did the said  
house pass thereby, as not being part of the said ancient college.  
He admitted, that under the said deeds in the bill mentioned the  
*Repington* family were entitled to the deanery of *Tamworth* ;  
but he insisted, that nothing passed by such deeds but what  
belonged to the said dissolved college. He also admitted, that  
*Roger Molde* was made preacher of the said church by *Queen  
Elizabeth* ; but said, that he had never considered himself as vic-  
car, but always as a preacher ; that *John Read* succeeded him,  
and so continued till the year 1630 ; and that *John Oldacres*  
succeeded *Richard Walker* as curate, who continued till 1624 or  
1625, and received the salary of sixteen pounds a-year. He  
said, that he did not know by whom they were appointed, but  
believed that they were not appointed by any persons claiming  
under the said grant to *Downing* and *Asbeton* ; that their  
appointment was consistent with the grant made to the corpora-  
tion of *Tamworth* ; and that *Thomas Blake* succeeded the said  
*Read* as preacher, but not by any appointment of the *Repington*  
family. He said, that he believed that *Seabright Repington*  
appointed *Samuel Langley* vicar of *Tamworth* in the year 1663 ;  
but that such appointment was collusive, because the said *Langley*  
had been in possession of the said church as preacher or curate  
under the appointment of the corporation from *November 1657* ;  
and he stated the other appointment under the *Repington* family  
to the plaintiff, as in the bill ; but being collusive, he hoped that  
the right of the corporation would not be prejudiced thereby.  
The answer further stated, that the said church was augmented  
by the bounty of *Queen Anne*, with the consent of the said

guardians

guardians and governors as he believed ; and he apprehended that *Edward Repington* considered it as legally augmented ; and that the pretended right of his family therein was thereby converted from a *donative vicarage* to a *perpetual curacy*, and subject to the ordinary. He admitted the *quære impedit*, and also the ejectment, and all the proceedings thereon, as mentioned in his answer. The defendant then stated the letters patent of *Queen Elizabeth*, dated the eleventh of *October*, in the thirtieth year of her reign ; and averred, that *Charles the Second*, by his letters patent the seventeenth of *February*, in the sixteenth year of his reign, had confirmed the said former grant respecting the appointment of such ministers or curates and the said house and garden ; and insisted on the act of the forty-third year of *Queen Elizabeth*, by which all grants made by the crown since the eighth of *February*, in the twenty-fifth year of her reign, should be good and available in law ; by which act the letters patent of the thirtieth year of the said queen, under which the corporation claimed, were confirmed, and those under which the plaintiff claimed were not confirmed. He also said, that there never was a vicar in the said church with cure of souls ; and that therefore no patronage of such could exist. He admitted, that he had regularly received the said stipends of twenty pounds and sixteen pounds yearly until *October* 1764 ; but said, that the same being subject to taxes and fees, he had never received more than twenty-six pounds, ten shillings, and eightpence a-year for such stipends. He also said, that the guardians and governors, by an instrument under their common seal, dated the fifth of *January* 1759, granted the said church to him as to a perpetual curacy ; and that thereupon he was licensed by the bishop, and had entered on the said church on the eighth of *April* following, and did the duty till *October* 1761, when he was forcibly dispossessed, during all which time he paid forty pounds a-year to a curate for assisting him in his duty. He then stated the several benefactions which had been given to the said church, and what monies he had received on account thereof ; and hoped the court would not entertain the said bill, because the several matters therein were triable at law. He insisted, that it was necessary for the plaintiff, before he was entitled to the relief prayed by the bill, to have established his right at law, in which point he had failed ; and also insisted, that the church was full ; and on the length of time lapsed ; and that it was a matter merely triable at law ; and claimed the benefit thereof in as ample manner as if he had insisted thereon by plea or demurrer. He also insisted, that upon the construction of the said several grants of the crown under which the *Repington* family and the said corporation claimed the right of nomination, the undoubted right thereof belonged to the corporation, and the rather as there had been no enjoyment inconsistent with such right : he therefore hoped, that his right under their nomination

SAWREY  
against  
COLLINE.

that the grant of  
*Queen Elizabeth*  
to *Tamworth*  
School was con-  
firmed, and that  
to *Downing* was  
not ;

that he had re-  
ceived the sala-  
ries of 20l. and  
16l. a-year to  
*October* 1764 ;

that *Tamworth*  
School granted  
the church to  
him on the fifth  
of *January*  
1759 ;

that he was dis-  
possessed forc-  
ibly in 1761 ;

that the bill  
ought not to be  
retained until  
the plaintiff had  
established his  
right at law.

SAWREY  
against  
COLLINS.

The guardians  
of Tamworth  
School plead in  
bar; but the  
plea is over-  
ruled.

nomination should be established to him, and that he should receive the consequential benefits arising therefrom, without any future interruption from the plaintiff.

The guardians and governors, &c. by their plea to part of the bill, stated the *quære impedit* brought by *Charles Repington* against them and the defendant *S. Collins*, their clerk, and the proceedings had thereupon, and the said verdict for the plaintiff therein; but said, that they being advised that such verdict could not be supported by law, for want of a sufficient title in the said *Charles Repington*, applied to the court, and obtained a stay of judgment thereon. They also stated the *ejectment* brought by the plaintiff to recover the possession of the said house and garden, and the proceedings had thereon, and the verdict obtained by the defendant *Collins*, upon which final judgment had since been entered up and now remained in force; and said, that they were advised that the plaintiff's right, if he had any, was merely triable at law, and ought not now, after this length of time, to be re-examined in this court; all which matters the defendants pleaded in bar to such part of the said bill as before-mentioned; and for answer to the residue of the said bill, they admitted that the plaintiff, after obtaining the said verdict, had entered on the incumbency of the church, and continued therein; but denied, that he did the same with their consent or approbation. But by an order made in this cause, the said plea was, on the arguing thereof, over-ruled by the court.

The Bishop of  
Litchfield says,  
that *Edward*  
*Repington* pre-  
sented to him  
the nomination  
of the plaintiff  
*Sawrey* to the va-  
cant curacy of  
Tamworth, and  
requested that  
he would licence  
the said *Sawrey*  
to preach; but  
that he refused  
to do so, because  
the guardians of  
Tamworth School  
had entered a  
caveat to pre-  
vent him;

The defendant the Bishop of Litchfield and Coventry, by his answer, admitted, that *Edward Repington* caused to be delivered to him an instrument, dated the first of December 1758, whereby he nominated the plaintiff to the perpetual curacy of Tamworth, then void by the death of *Robert Wilson*, clerk, and prayed his licence to preach and perform divine offices in the parish church of Tamworth; that on the nineteenth of May 1759, the plaintiff attended him, and produced such instrument, and requested such licence, which he refused to grant, because, before such production, the guardians and governors &c. (upon *Wilson's* death) entered a caveat with him against his granting a licence to any one nominated by the said *Edward Repington*; that the said *Edward*, when he delivered to the defendant his instrument of nomination, entered also a caveat with him against the granting a licence to any one nominated by the said guardians and governors. He believed, that the said *Edward* died, and that the defendant *Collins* applied to him for such licence on a nomination to him made by the said guardians, &c. who claimed a right to nominate to such vicarage or curacy; but the said defendant did then, and during the said *Edward's* life-time, refuse such licence, by reason of the caveat by him entered as aforesaid;



aforesaid; but that upon his death, the said *caveat* becoming void, the defendant *Collins* again applied for such licence; and no fresh *caveat* being entered by the real or personal representative of the said *Edward*, or by any other person claiming under him, he, on the thirtieth of *March* 1759, granted his licence to the defendant *Collins* to officiate in the said church, as he conceived he had a right to do; but in case the Court should be of opinion that the defendant *Collins* was not entitled to such licence under such nomination as aforesaid, he was ready and willing to recal such licence, and to grant a licence to the plaintiff as the court should direct.

Before any further proceedings were had in the cause, the defendant *Charles Repington* died; and thereupon the plaintiff filed his *bill of reviver* against *C. E. Repington*, his eldest son and heir, to have the former proceedings revived; to which bill he, being an infant, appeared, and put in his answer by guardian, and submitted to have the same revived; and hoped the Court would take care of his interest. The proceedings being duly revived, pursuant to order dated the seventeenth of *July* 1767, the guardians and governors filed their answer, and stated and insisted upon the several matters and things which were mentioned and insisted on by the defendant *Collins* in his answer, and particularly that the right of nominating and appointing the preacher and minister or curates in the said church of *Tamworth* was a *donative right* in them and their predecessors until the time of the augmentation thereof by the late *Queen's* bounty; and that such augmentation was properly made with the consent of the patron. They also insisted, that all the nominations made by the *Repington* family were collusive, and without any legal authority; and that since such augmentation, made as aforesaid, the said church had become a perpetual curacy, and subject to lapse and all other consequences of presentative livings. They also insisted on the same matters as the defendant *Collins* had before done in bar of the relief prayed by the bill; and claimed the same benefit therefrom as if they had specially pleaded the same.

The plaintiff replied; the defendants rejoined; and divers witnesses were examined on the part of the defendant *Collins* only; when upon hearing the counsel several days for all parties; and on reading two several orders of this court for proving the several exhibits therein mentioned *visu voce* at the hearing; the act of parliament of the first year of *Edward the Sixth*; a certificate from the augmentation office made in pursuance of the said act, dated the thirtieth of *May*, in the second year of the said king's reign; the several entries therein touching the collegiate church of *Tamworth*; copies of enrolments of certain declarations, signed *Richard Forster*, dated the last day of *June*, in the same year; several entries therein touching the said church; a copy of the accounts of

William

SAWNEY  
against  
COLLINS,  
that the said *caveat* becoming void on the death of *Edward Repington*, he licensed the defendant *Collins*, who had been before appointed to the curacy by the guardians of the school.

*Charles Repington* dies; and the proceedings being revived,

the guardians of the school answer; and insist, that the right of nomination was a *donative right*;

but that the church having been augmented by *Queen Anne's* bounty is become *presentative*; and that the presentation of *Repington* was collusive.

The evidence read.

SAWREY  
against  
COLLINS.

*William Sheldon*, of chantry lands, from *Michaelmas Day*, in the second year, to *Michaelmas Day*, in the third year of the said king's reign; another of the account of *Francis Savage*, of the like form; the grant or letters patent of *Queen Elizabeth*, dated the twenty-seventh of *October*, in the twenty-third year of the said queen, to *Downing* and *Asbeton*; the indenture, dated the twenty-first of *February*, in the twenty-fifth year of the said queen, from them to *John Morley* and *Roger Rant*; the indenture, dated the tenth of *May*, in the same year, from them to *Thomas Repington*; counterparts of several deed polls and indentures following, viz. a deed poll, dated the twenty-eighth of *August*, in the seventh year of the reign of *James the First*, signed *Samuel Hodgkinson*; an indenture, dated the twelfth of *November* 1629, signed *Thomas Blake*; another, dated the seventeenth of *December* 1663, signed *Samuel Langley*; another, dated the nineteenth of *June* 1694, signed *Samuel Collins*; another, dated the eighth of *January* 1710, and signed *George Antrobus*; an inrolment from the office of one of the auditors of the land revenues of the crown, dated the twenty-ninth of *December* 1724, signed *Edward Repington*; copies of debentures from the same office, viz. a debenture for one year to the tenth of *October* 1758 for twenty pounds, signed by the defendant *Collins*; the like for one year, to the tenth of *October* 1759, for twenty pounds; the like for the same year for sixteen pounds, and both signed by the said defendant; a deed poll, dated the first of *December* 1758, signed *Edward Repington*; another indenture, dated the fifth of *May* 1659, signed *Charles Repington*; the exemplification of a decree of this court, dated the twentieth of *November*, in the nineteenth year of the reign of *Queen Elizabeth*; copies of two several debentures from the auditor's office for twenty pounds and sixteen pounds, for one year, to *Michaelmas Day* 1725, signed *Robert Wilson*; and on reading, for the defendants, two several orders, to prove exhibits, &c.; the grant of the incorporation of the town of *Tamworth* under THE GREAT SEAL, dated the tenth of *October*, in the thirtieth year of *Queen Elizabeth*; the statute of the forty-third year of *Queen Elizabeth*; the copy of a grant from THE CROWN to the said corporation, dated the seventeenth day of *February*, in the sixteenth year of *Charles the Second*; several copies from the parish register of the town of *Tamworth*; the copy of the account of *William Baynham* from the said auditor's office from *Michaelmas Day*, in the nineteenth year, to *Michaelmas Day*, in the twentieth year of the said queen; and another account of *William Baynham* from the thirty-first year to *Michaelmas Day*, in the thirty-third year of the said queen; the copy of the account of *Giles Forster*, from the augmentation office, from *Michaelmas Day*, in the sixth year, to *Michaelmas Day*, in the seventh year of *James the First*; several exhibits mentioned in the depositions of *James Vale*; and

and upon the defendants offering to read the deposition of the said *J. Vale* to prove an ancient book taken from the corporation chest in the town hall of *Tamworth*, marked S, objection was made by the plaintiff's counsel, whereupon the said deposition was refused to be read; and on reading two entries in the corporation book of *Tamworth*, marked Y, and proved by the said *J. Vale*, the one dated the first of *August* 1694, and the other the twenty-ninth of *March* 1715; two several deed polls under THE COMMON SEAL of the corporation, the one dated the fifth of *July* 1711, and the other the thirty-first of *December* 1725; and two entries in the said corporation book, dated the fifth of *July* 1711 and the first of *April* 1725; the licence to *Robert Wilson*, dated the seventh of *June* 1725; an indenture, under the seal of the corporation of *Queen Anne's Bounty*, dated the twenty-sixth of *October* 1734; other exhibits, pursuant to order; also another entry in the said corporation book, dated the tenth of *February* 1723; and the nomination of the defendant *Collins* by the said corporation, dated the fifth of *January* 1759; the licence granted to the defendant *Collins* by the said bishop, dated the thirtieth of *March* 1759; the relaxation of the said bishop, dated the fourth of *April* 1759; a certificate from the augmentation office, dated the thirtieth of *May*, in the second year of *Edward the Sixth*; a declaration from the said office, dated the thirtieth of *June*, in the second year of *Edward the Sixth*; the copy of a rule of the court of common pleas, dated the sixteenth of *May*, in the third year of the reign of his present majesty; an indenture, dated the twenty-sixth of *October* 1734, under the seal of the said corporation of *Queen Anne's Bounty*, and signed *James Henderson*; and on full debate of the matter;

SAWREY  
against  
COLLINS.

THE COURT took time to consider thereof, and ordered the cause to be continued in the paper for their opinion thereupon; and the cause now coming on accordingly for the opinion of the court, it was this day ordered, that it be referred to a trial at law to be had between the parties in a feigned action to be for that purpose brought to try the several issues following, viz.

The Court direct issues to try,

FIRST, "Whether *Charles Repington, Esquire*, in the pleadings of this cause named, brother and heir at law of *Edward Repington, Esquire*, therein also named, or any person claiming by, from, or under them, or either of them, was, before and on the fifth day of *May* 1759, seised of, or entitled unto the advowson of the vicarage and church of *Tamworth*, in the said pleadings mentioned?"

1st, Whether *Repington* was entitled to the advowson.

SECONDLY, "Whether the complainant *William Sawrey* was, before and at the time of his exhibiting his said bill in this cause, lawfully appointed vicar of *Tamworth*?"

2dly, Whether *Sawrey* was lawfully appointed.



**SAWREY**  
against  
**COLLINS.**

THIRDLY, "Whether the said complainant *William Sawrey* was entitled to the house formerly belonging to the vicars choral of *Tamworth*?" and,

3dly, Whether he was entitled to the vicarage-house.

4thly, Whether he was entitled to the salaries.

FOURTHLY, "Whether the said *William Sawrey* was entitled to the stipends or salaries of twenty pounds, and eight pounds, and eight pounds, of the curates of *Tamworth*, or to any, or either, or which of them?"

The plaintiff in equity to be the plaintiff at law, &c. ; and in case any special matters shall arise on such trial, the judge who shall try the same is at liberty to order the same to be indorsed on the *posita* as he shall think fit, &c. The consideration of costs and further directions to be reserved until after trial shall be had.

*Collins* appeals to the house of lords.  
The decree affirmed.

The defendant *S. Collins* being dissatisfied with the said decretal order appealed therefrom to THE HOUSE OF LORDS; and the appeal was heard at the bar of the house on the seventh and tenth days of *February* 1772, on the last of which days their lordships were pleased to affirm the said order.

The feigned issues tried, and found in favour of the plaintiff *Sawrey*.

The said feigned action came on to be tried on the thirtieth day of *March* 1772; when it was found,

"AS TO THE FIRST ISSUE, that the said *Charles Repington*, brother and heir at law of the said *Edward Repington*, deceased, or some person claiming by, from, or under them the said *Edward Repington* and *Charles*, or one of them, was before and on the fifth day of *May* which was in the year 1759 seised of, and entitled to the advowson of the vicarage and church of *Tamworth* aforesaid."

"AS TO THE SECOND ISSUE it was found, that the said plaintiff *William Sawrey*, before and at the time of exhibiting his bill in this cause, had been lawfully appointed vicar of *Tamworth* aforesaid."

"AS TO THE THIRD ISSUE it was found, that the said *William Sawrey* was, on the sixth day of *November*, in the year 1763, entitled to the house formerly belonging to the vicars choral of *Tamworth* aforesaid."

"AND AS TO THE LAST ISSUE it was found, that the said *William Sawrey*, at the time of the exhibiting his said bill in this cause, to wit, on the sixth day of *November* 1763, was lawfully entitled to the yearly stipends or salaries of twenty pounds, and eight pounds, and eight pounds, and to all and every of them."

The cause came on to be heard upon the return of the *possea* on the twenty-fourth of July 1772; and the plaintiff's counsel informing the court, that upon application made to the court, on the twenty-fifth day of February 1767, on behalf of the plaintiff, stating, that the defendant *Simon Collins* had, by his answer to the bill, admitted that he had received, from the time of his nomination to the time of putting in his answer, the several sums of money particularly mentioned therein, amounting to four hundred and twenty-nine pounds, twelve shillings and tenpence, THE COURT ORDERED, that *S. Collins* should, within the time thereby limited, give security by recognizance, to the satisfaction of the deputy remembrancer of this court, to answer and pay to such person or persons, and in such manner as the court should at any time thereafter order or direct, the said sum so by him received as aforesaid, and also all and every such further sum and sums of money as he should receive, or might have received, of the yearly stipends, pensions, and salaries aforesaid, and of the rents and profits of the lands belonging to or occupied by him, the said defendant *Collins*, as vicar, curate, preacher, or minister of *Tamworth* aforesaid, or by his tenants, or of such rents and profits as were chargeable on any lands whatever, and were payable to such vicar, curate, preacher, or minister for the time being.

*SAWREY*  
against  
*COLLINS.*

The defendant *Collins* ordered to give security for the monies he had received.

*S. Collins* gave such security by recognizance as was directed by the said order; and upon reading the said decretal order and the *possea* indorsed on the record; and hearing counsel for all parties; and on debate of the matter; and hearing what was alledged on behalf of all the said parties;

THE COURT declared, that the plaintiff *William Sawrey* was entitled to the vicarage of *Tamworth* aforesaid before and at the time of his exhibiting his bill of complaint in this cause, as having been lawfully appointed thereunto by *Charles Repington, Esquire*, deceased, in the pleadings of this cause named, on the fifth day of May 1759; and that he the said *William Sawrey* then became, and still was entitled to the several stipends or salaries of twenty pounds, and eight pounds, and eight pounds, of the curates of *Tamworth*, in the said pleadings also mentioned.

*Sawrey* declared entitled to the vicarage.

AND IT WAS THEREUPON ORDERED, &c. that the defendant *S. Collins* do come to an account with the plaintiff for the said several stipends or salaries of twenty pounds, and eight pounds, and eight pounds, of the curates of *Tamworth*; and also for the several rents, surplice fees, and fees which had been received by him the said *S. Collins*, or which, without his wilful default, might have been received by him since the twenty-fifth day of October 1761. The deputy remembrancer to take the said account, &c.

*Collins* ordered to come to an account.

SAWYER  
against  
COLLINS.

The Bishop ordered to grant Sawrey a licence.

Collins ordered to deliver possession of the vicarage-house;

and all papers belonging to the vicarage.

AND IT WAS FURTHER ORDERED, that the defendant the bishop of *Litchfield and Coventry* do grant a licence to the said plaintiff *William Sawrey* to officiate as vicar, curate, preacher, or minister of *Tamworth* aforesaid.

IT WAS ALSO ORDERED and decreed, &c. that *S. Collins* do forthwith deliver up to *William Sawrey* the possession of the house formerly belonging to the vicars choral of *Tamworth* aforesaid; and that he *S. Collins*, and the said guardians, governors, and capital burgesses, do forthwith deliver up to the said *William Sawrey*, upon the oath of him the said *S. Collins*, and of *C. Oakes*, town-clerk of *Tamworth*, all books, papers, and writings, belonging to the vicarage or curacy of *Tamworth* aforesaid, and that the aforesaid defendants do pay to the said plaintiff his costs of this suit to the time of the hearing thereof on the said twenty-fourth of *November 1768*, and also from the time of the affirmance of the said decrees by the house of lords, together with his costs at law to this time, to be taxed by the said deputy remembrancer; and that the said plaintiff do pay to the said defendant, *E. C. Repington*, his costs of this suit to be also taxed; and likewise the costs of the said bishop of *Litchfield and Coventry*, according to the course of the court, forty shillings, which last mentioned costs the said plaintiff is to have over again from the defendants, *S. Collins*, &c. further directions and subsequent costs to be reserved till after report made herein.

The recognizance to stand as security.

AND IT WAS FURTHER ORDERED, &c. that the said recognizance entered into by the said defendant *S. Collins* and his sureties do stand and remain in full force until the further order of this court which shall be made touching the same.

THE COURT FULL.

MICH. TERM,  
9. GEO. 3.

FLEMING against BREWER.

*Shropshire*, 6th December 1768.

The vicar of *Higley*, in *Shropshire*, claims the tithes of cordwood, clover seed, rye grass, lambs, and a pound rate for other tithes arising on *Wood End Estate* and *Claverly Lands*; and also *Easter offerings*.

THE bill stated, that the plaintiff had been, ever since the year 1759, vicar of *Higley*, in the county of *Salop*, and was entitled to all vicarial tithes arising therein; that the defendant had ever since occupied a farm called *the Wood End Estate* and *Claverly Lands*; that the plaintiff, being entitled to the tithes and ecclesiastical dues thereof, came, on the sixth of *July 1759*, to an agreement with the defendant and several other inhabitants, by which he agreed to set the tithes due to him (except *Easter offerings*, cordwood, clover seed, rye grass seed, hops, and such lambs as were yeaned by ewes taken to tack and wintered in the parish) arising from the several farms therein mentioned, to the then occupiers thereof at sixpence in the pound, as follows, viz. the defendant for *the Wood End Estate* sixteenpence; for *Claverly Lands* fourteenpence; the said agreement



ment to be in force so long as the plaintiff should continue vicar, and the occupiers to rent or possess their farms, and to account annually at *Easter*; that the plaintiff was willing to perform the said agreement, but that the defendant, ever since 1759, had not paid him the said composition of sixpence in the pound, according to the said agreement, which amounted to forty shillings a year. The bill further stated, that he was also entitled to receive yearly at *Easter*, from each parishioner, inhabitant, and married man of the said parish, *Easter* offerings after the rate following; for a married man twopence; for his wife and every child twopence; the said offerings not being comprized in the said agreement, and which the defendant had never paid. The bill further stated, that the defendant had, in each year, cut down fruit trees, apple-trees, and underwood, and other trees on the lands he occupied, and made cordwood thereof; that he had also grafs, clover-seed, and rye grafs seed upon his lands; that he also had fallen from the ewe sheep, which he had taken to tack and wintered on his said lands, several lambs, for which he had never paid any tithes: the bill therefore prayed an account and payment.

The defendant admitted, that the plaintiff was vicar, but not that he was endowed, and said that the tithes of the said lands, and not a *modus*, ought to be paid to him. He also admitted the agreement, and said, that he had always been ready to account, but that the plaintiff was greatly indebted to him, and had refused to account with him; and he insisted that the estates he occupied could not produce eleven shillings a year composition for the tithes thereof, over and above the tithes excepted in such agreement, which he said he was ready to pay. He said, that he had cut down some fruit trees and underwood for firewood, but that he had never sold any; that they were old and decayed, and fifty years standing, and that no tithe could be due for the same, especially as he paid a *modus* of one penny yearly, called a *smoke penny*, in lieu of wood burnt in his house. He also submitted whether he ought to pay tithe of clover seed, as there was a *modus* for grafs cut on his lands; but he insisted, that he had in every year (save the last) set out his tithes of clover seed, and that the plaintiff had carried them away. He also said, that he had tacked sheep to winter grafs since such agreement, and that the lambs dropped from such ewes since the said agreement were included therein; and therefore that he ought not to account for them to the plaintiff: and he set forth his other titheable matters, and said that he was ready to account.

The plaintiff replied; the defendant rejoined; and witnessses were examined on both sides; and upon hearing counsel, and reading the answer, and on full debate;

FLEMING  
against  
BREWER.

The defendant says, that he had always been ready to account with plaintiff for his tithes, but that the plaintiff, being greatly indebted to him for other matters, had refused to account;

that he had cut down no wood, excepting old decayed fruit trees, and that there was a *smoke penny* paid;

that there was a *modus* for grafs, which included clover and rye; that the tithes of lambs were included in the pound rate.

The cause heard.

FLEMING  
against  
BREWER.

An account de-  
creed of all mat-  
ters excepting  
cordwood and  
*Easter* offerings.

THE COURT ordered the bill, so far only as the same related to the demand of cordwood and *Easter* offerings, to be dismissed; and the deputy remembrancer to take an account of all the other dues and titheable matters; and also of all other dealings and transactions between the parties; costs and further directions to be reserved till after the report.

MICH. TERM  
9. GEO. 3.

WILLIS, D. D. against HARVEY.

*Lincolnshire, 9th December 1768.*

The vicar of  
*Holbeach*, in *Lin-*  
*colnshire*, claims,  
zs. a year from  
every person  
who does not  
hold more than  
two acres and  
three roods; in  
lieu of the tithe  
hay thereof  
when mowed,  
and small tithes  
in kind when  
not mowed;

the tithes for the  
agistment of  
sheep fed and  
depastured from  
shearing day un-  
til fold, at the  
rate of 1d a  
month for each  
sheep;

THE bill stated, that on the tenth day of *April* 1750, the plaintiff was duly instituted into the vicarage and parish church of *Holbeach* (a), in the county of *Lincoln*; that on the twelfth of *May* following he was inducted, and thereby became entitled to all tithes whatsoever arising therein; that by ancient endowment, or other lawful means, the vicars of the said vicarage had for a great number of years been entitled to three acres and a half of arable land, which the rectors of the said church, before the appropriation of the bishopric of *Lincoln*, enjoyed as their glebe, and to all other fruits, revenues, profits, and oblations whatsoever belonging to the said church; except the tithes of corn, wool, lambs, flax, and hay; the tithes in kind of all which last mentioned articles being due and payable to the bishop of *Lincoln*, in right of his bishoprick, excepting only that the vicars of the said church were entitled to all customary payments due for hay, wool, and lambs within the said parish. The bill then stated, that one shilling a year had been immemorially paid at *Easter* to the rector of the parish before such appropriation and endowment of a vicar, and since to the vicar thereof, by the occupiers of all small parcels of land not containing more than two acres and three roods, in lieu of the tithe of hay thereof in each year in which such small parcels had been mowed for hay, and that when they were not mowed they were subject to the payment of vicarial tithes. The bill then further stated, that the defendant *Harvey* and others had, during the said time, occupied land in the parish; that they had mowed for hay several small pieces of meadow land in their respective occupations in the said parish, which did not contain more than two acres and three roods. That they had also, from time to time in each of the said years, kept and depastured on their said lands sheep which they fattened and sent to the *London* market or elsewhere to sell for slaughter; that the greater part of such sheep were kept on such lands for some time after the shearing thereof; that the plaintiff thereby

(a) See *Pearson v. Hoskerton*, Vol. i. page 380; *Hankin v. Fotheringham*, Vol. ii. page 94; Vol. ii. page 184; and *Willis v. Fotheringham*, post, 22d February 1774, Hilary Term, 11. Geo. 3.

became

became entitled to the tithe agistment of all such sheep, from the time they were last sheared until the time they were taken away for sale; and that, as they were mostly of a large size, their agistment was well worth one penny a month for each sheep; that the defendant *Mitchell*, during the said time, had depastured on his said lands horses for the purpose of letting them out for hire; that he had actually let them out for hire; and that he, the plaintiff, thereby became entitled to tithe for agisting the same; that the defendants, during the said time, had on their lands turnips, the tithe whereof was justly due to the plaintiff; that for time immemorial the following sums had been payable at *Easter* as *modus*es in lieu of tithes, TO WIT, fourpence yearly for every beast fatted on their respective lands and sold for slaughter, and the tenth shilling for the let or hire of any pasture within the said parish for the agisting of cattle thereon; that they had, during the said time, many beasts fatted and several cattle agisted, for which they ought respectively to have paid the plaintiff such *modus*es as aforesaid, in lieu of the tithes thereof; that they had neglected, under several pretences, so to do, and had combined with the other defendants, *Rayne* and *Houlditch*, to deprive the plaintiff of his right on pretence that no such *modus*es were due: the bill therefore prayed, that the defendants might answer the premises, and respectively account with the plaintiff for all the said tithes and *modus*es, and might pay him what should appear due to him from them respectively on such account.

WILKES  
against  
HARVEY.

the tithe for de-  
pasturing horses  
let to hire;

Fourpence a  
year for every  
ox fatted for  
slaughter, and  
the tenth shilling  
for pasture let.

The defendant *Harvey* and others, by their answer, admitted that the plaintiff was vicar, and as such entitled to all the vicarial tithes which had formerly been paid to his predecessors; but whether the vicars of the said parish had been entitled, by ancient endowment, to three acres and a half of arable land, which the rectors of the said church enjoyed as their glebe before the appropriation of the bishopric of *Lincoln* they knew not; nor whether the tithes of all such small parcels of lands as two acres and three roods, and under, when mowed within the parish, were payable to the vicar, or to the bishop, or his lessee; that they had been informed, that some of such small parcels of land, when mowed, paid tithe to the vicar, and others to the bishop's lessee, and that therefore they could not set forth to whom such tithes rightfully belonged. They further said, that the tithes of corn, wool, lambs, flax, and hay were due and payable to the bishop of *Lincoln* in right of his bishoprick, or to his lessee, and that the defendants, *Thomas Rayne*, clerk, and *Jane Houlditch*, were the present lessees to the bishop; that the defendant *Harvey*, as tenant to them, claimed the tithes of corn, wool, lambs, flax, and hay, yearly growing within the said parish. The defendants further stated, that they believed that if any parishioner had one, two, three, four, five, or six



WILLIS  
against  
HARVEY.

fleeces; or one, two, three, four, five, or six lambs, which are called *odds*, the vicar of the parish was entitled to have for every such *odds of wool and lamb* one halfpenny, and no more. They further said, that they neither knew nor believed that any tithe, *modus*, or composition was due to the vicar of the said parish for such sheep as had been depastured on the lands therein, and fattened thereon and sent to *London* or elsewhere for sale, after having been kept on such lands for some time after the shearing thereof, till the time they were taken therefrom for sale; and that if any tithe, *modus*, or composition was due, the sum of one penny a month, claimed by the plaintiff, was greatly above the value thereof. They also denied, that any agistment tithe for horses depastured on the lands in the parish kept for the purpose of letting out for hire was due to or had been usually paid to the vicar of the parish. They also denied, that any tithe was, to their knowledge, due to the plaintiff as vicar for turnips growing and eaten by store sheep designed for clipping the next season and before sale, and for which tithes in kind were due and payable to the impropiator or his lessee, under-tenant, or assigns, as sheep kept upon grass ground; but they admitted, that for every beast brought into the parish, and wholly fatted in summer grass, and sold off fat, there was due to the vicar fourpence, and no more, at *Easter*, after such beast was sold; and also, that for every beast bred within the parish, and sold off fat, before it was milked or yoked, above a year old, wholly fed in summer grass, there was due to the vicar the sum of twopence, and no more, payable as aforesaid. They denied, that the tenth shilling for the let or hire of any pasture within the parish for cattle to be agisted thereon, was due or ever had been paid to the vicar or vicars thereof.

The defendant *Harvey* admitted that he had depastured the sheep after they had been sheared, and said, that he had drafted them off for sale occasionally; and that not the was due for such agistment;

that he had fed off his turnips with store sheep, not for sale;

The defendant *Harvey* said, that he occupied several acres of lands of different people as tenant; and that great part of such lands were grazing grounds. He admitted, that he had fed and depastured his sheep thereon from the time they were last sheared until the time they were taken therefrom for sale; but he said, that such sheep were drawn out and sent at different times to different markets by ten, twenty, thirty, or more, at a time, as they became fat and the markets suited, some immediately after shearing, others in ten or fourteen days, and others in a month, and in that manner till all the sheep for sale were disposed of, as late as near *Christmas*; and that, as he had never known that any agistment tithe was due to the vicar for such sheep, he had kept no account thereof; and he denied that any such tithe was due. He also said, that he had, during that year, some turnips, which he had fed off with store sheep, not for sale; and that he had kept four beasts thereon, which he fed with hay and foddered three times a day, together with the store sheep, until the said turnips were eaten; and he denied

nied that any tithe was due to the vicar for the same. He also said, that he had never kept any horses to let out for hire, nor had any meadow or had mowed any land so small as two acres and three roods, and under, since he had occupied the said lands; that he had duly paid the plaintiff all the vicarial tithes arising on his lands as the same became payable; and that the plaintiff had always been so contented therewith that he had never made any complaint or demand thereof until lately.

The defendants *Jackson* and *Savage* admitted, that they were tenants and occupiers of land, and put in the like answer as the defendant *Harvey* had done.

The defendant *Mitchell* said, that he occupied, as tenant, a few acres of land; that the greater part thereof was pasture ground, and that he mowed one small parcel of the same; that the same being intermixed land, and not apprehending or believing that any tithes were due to the plaintiff for the same, he had always paid tithes to the defendant *Harvey*, the tenant to the impropiators. He also said, that he had never kept any sheep thereon, except a cade lamb, and two and three ewes, and that he had never fed any off for sale. He denied that any agistment tithes were due to the plaintiff as vicar. He said, that he had never kept horses to let out for hire, except two or three for a post-chaise, which he kept only from the middle of *May* 1765, and that he then kept the same. He admitted, that he had taken in horses to agist on his lands, but not more than one or two at a time, at various times, by the week or year, as the case happened; and that, not believing that any tithe was due for the same to the vicar, he had kept no account thereof. He denied having any turnips on his lands, or any beasts fatted thereon, and said that he had duly paid the plaintiff all his vicarial tithes as the same became due.

The defendants *Rayne* and *Houlditch* said, that they believed that the plaintiff was vicar of the parish, and as such entitled to all such tithes and dues as had been paid to his predecessors; that the rectory of *Holbeach* was theretofore appropriated to the bishopric of *Lincoln*; that in the year 1340 the vicarage was endowed thereout; that by such endowment the vicar was endowed, as they believed, of three acres and a half of arable land, which the rectors of the parish, before the appropriation thereof, had enjoyed for their glebe; and also of all fruits, revenues, profits, and oblations to the said church of *Holbeach* belonging, except the tithes of corn, wool, lamb, flax, and hay, which were appropriated to the bishopric of *Lincoln*, and then belonged to the bishop thereof, as rector or impropiator, or to his lessee or farmer; that the said vicar was also, by such endowment, endowed, as they believed, with certain payments which, by the custom of the parish, had been or ought to be

WILLIS  
against  
HARVEY.

that he had not kept any horses for hire, and did not occupy any parcel of land so small as two acres and three roods.

*Jackson* and *Savage* say they hold under *Harvey*.

The defendant *Mitchell* says, he never fed any sheep except a cade lamb and two or three ewes, but not for sale;

that he had fed no other horses than those he kept for a post chaise;

that he had taken in horses to agist;

that he had no turnips.

The defendants *Rayne* and *Houlditch* say, that the vicar is endowed with three acres and a half of arable land, and certain payments for hay, wool, and lamb;

WILLIS  
against  
HARVEY.

1d. a year for  
the odds, in lieu  
of tithe hay.

1d. for the odds  
of wool and  
lamb;

that they, as les-  
sees of the rec-  
tor, are entitled  
to the tithes of  
corn, wool,  
lamb, flax, and  
hay, except as  
aforesaid;

that the vicar  
is not entitled  
to tithe hay from  
the odds when  
mown;

but that the  
same belongs to  
Harvey, their  
under tenant;

paid for hay, wool, and lambs; that such endowment was still extant, and then remained in the archives of the registry of the bishop of *Lincoln*; that the bishop of *Lincoln*, in right of his bishopric, or his farmer or lessee, had, ever since the appropriation of the rectory, and the endowment of the vicarage, been, and then was, as the said defendants believed, entitled to the tithes of corn, wool, lambs, flax, and hay, arising within the parish or the titheable places thereof, save and except the customary payments before mentioned, which belonged to the vicar, which were, as they believed, as follows, TO WIT, a certain customary payment in money for tithe of hay of certain small parcels of land within the said parish when mowed for hay, not containing more than two acres and three roods a piece, which are called *odds*; and also a customary payment of one halfpenny for each fleece of wool of each lamb of such parishioners as have one, two, three, four, five, or six fleeces of wool; or one, two, three, four, five, or six lambs, either under or above any number titheable in kind, which are likewise called *odds of wool and lambs*; that the said customary payments had been paid to and received by the vicar of *Holbeach* time out of mind, and ever since the said endowment of the vicarage. They further said, that they were farmers or lessees of the rectory and parsonage of *Holbeach* and were entitled thereto by and under a lease thereof from the late lord bishop of *Lincoln*, dated the ninth of *March* 1748; and they set forth the same, and said, that by the said lease they were jointly entitled to the lands and tithes granted by it, and the tithes of corn, wool, lambs, flax, and hay arising within the parish and the titheable places thereof, as the impropiators of the said rectory and parsonage; and that the plaintiff, as vicar, was not entitled to any tithes of hay, wool, or lambs, except the said payments before mentioned. They denied that the plaintiff, as vicar, was entitled to have and receive of the occupiers of all small parcels of land within the parish, not containing more than two acres and three roods, the tithe hay arising from such small parcels when mown, or any payment in lieu thereof; for that, on the contrary, many occupiers of small parcels of land therein, not containing more than two acres and three roods, had, for time immemorial, paid the tithe hay arising from such small parcels when mown to the bishop, as rector or impropiator, or to his lessee or farmer thereof for the time being, and never to the vicar or any claiming under him. They insisted, that they or the defendant *Harvey*, their undertenant, were then entitled to the tithe hay of such small parcels of land when mown; that constantly and immemorially, when mown for hay, tithe thereof had been paid to the bishop's lessee or farmer; and that the vicar was only entitled to the tithe hay, or a payment in lieu thereof, of such small parcels of land only as did not contain more than two acres and three roods a-piece as were in such small parcels or odd



odd acres at the time of the endowment of the said vicarage, and not to the tithe hay of all the small parcels or odd acres of that size in the parish; that the usage, since the endowment, must explain what was thereby meant by payment for hay according to the custom of the place; that the vicar for the time being, from time whereof the memory of man was not to the contrary, had received and been entitled to receive the tithe hay of certain particular small parcels of land only which did not contain more than two acres and three roods, or to some customary payment in lieu thereof, and that the small parcels he was entitled to tithe hay from, or to a customary payment in lieu thereof, were well known and ascertained; that the vicar was not, nor could by law be entitled to any tithes whatever which were not mentioned in the endowment of the vicarage, or had been for time immemorial received by him as vicar thereof; and therefore, that they or their tenants were entitled to the tithe hay of such small parcels of land, so mown by the other defendants, as did not contain more than two acres and three roods, and which had never rendered or paid tithe to the vicar, but, on the contrary, had immemorially paid tithe to the bishop's lessee or farmer; and they believed that the plaintiff had no right thereto or to any thing in lieu thereof. They also insisted, that by virtue of the appropriation aforesaid, they, as the bishop's lessees, were entitled to the tithe wool of all sheep fed and depastured within the parish, or the titheable places thereof, except in cases as aforesaid, where a parishioner had one, two, three, four, five, or six, fleeces of wool under or above any number titheable in kind, called *odd fleeces*, for which a customary payment of one halfpenny for each fleece was due to the vicar. They also insisted, that they were entitled to the tithe of all sheep that were kept and depastured within the parish after shearing time, and that were sold off fat and removed out of the parish before the next shearing time, or to a rateable allowance for the tithe wool of such sheep for the time they fed and depastured in the parish after shearing time, until sold or removed; and that there was no *modus* or payment whatever that was due to the plaintiff, as vicar, for the tithe wool or tithes of sheep, save the halfpenny a fleece before mentioned; and they said, that persons keeping sheep on their lands within the said parish after shearing time, and selling and removing them before the next shearing time, had constantly paid the bishop's lessee or farmer of the said rectory the proportionable rateable tithe for the wool of such sheep for the time they had been so fed and depastured in the said parish after shearing thereof till sold or removed; and that no vicar had ever received, or been entitled to receive, any tithe or payment whatever for the wool or agistment of such sheep so fed, kept, fattened, and sold off as aforesaid; neither had any such tithe ever been demanded by any vicar save the plaintiff; and that they,

WILLIAMS  
against  
HARVEY.  
that the endowment must be explained by the subsequent usage; that the vicar was only entitled to tithe hay in those parcels of land which did not exceed two acres and three roods;

that the lands exceeding that quantity had immemorially paid tithe hay to the bishop or to his lessee;

that he or they are also entitled to tithe wool, except *odd fleeces*, for which  $\frac{1}{2}$ d. a fleece was due to the vicar; that he or they were also entitled to the agistment of all sheep fed after shearing time in kind;

and also a rateable tithe for the wool of such sheep;

or

WILKIN  
against  
HARVEY.

or their under tenant were entitled to a rateable tithe from the other defendants for all such sheep kept by them in the said parish after shearing time, for the time so kept, till sold or removed; and that the plaintiff, as vicar or otherwise, was not ever entitled to any tithes for the wool or agistment for any such sheep kept in such parish as aforesaid, except in cases where the number of such sheep kept by any parishioner was under or above the number titheable in kind. They denied, that they had ever set up or pretended any right to the tithes or *modus* mentioned in the bill, save the tithe hay of such small parcels of land not containing more than two acres and three roods, which had always paid tithe to the bishop's lessee, and never to the vicar; and the tithe wool, or allowance in respect thereof, of all sheep fed and kept in the said parish after shearing time, from the time they were last sheared till sold or removed away, to which, as lessees of the said bishop, they insisted, had a right, and they submitted the same to the court.

The bishop of *Lincoln* insists that he is, in right of his bishopric, entitled to all such great and small tithes and other dues and emoluments, as the vicar was not specially endowed with or could prescribe for.

The bishop of *Lincoln* said, that he believed the plaintiff was vicar, and entitled to such tithes and dues as had been paid to his predecessors; that the rectory had been theretofore appropriated to the bishopric of *Lincoln*; that the vicarage was anciently endowed, but with what in particular he left the plaintiff to shew. He said, that by virtue of the said appropriation, he, in right of his bishopric, or the lessees of his predecessors, claimed all manner of rectorial tithes whatsoever, both great and small, customary payments, *modus*, emoluments, and advantages arising within the said rectory, with which the vicarage was not endowed or could prescribe for. He also said, that the late bishop of *Lincoln* had made the lease to the other defendants, and he referred the plaintiff to them for an account for his demand.

The plaintiff replied; the defendants rejoined; and witnesses being examined; the cause came on to be heard on the thirteenth day of *November* last; when, upon hearing counsel for all parties, and reading the endowment and the appropriation, and also the answers and the proofs in the cause; after two days hearing the cause was adjourned over for the opinion of the court; now the same came on again, when

The court declared the vicar entitled to the agistment tithes of sheep from shearing day until they are sold;

THE COURT declared, that the plaintiff, as vicar of *Holbeach*, had, by virtue of his endowment thereto, been from the time of his induction into the same, and still was entitled to the tithes of the agistments of all sheep kept and depastured on the lands in the parish from the time the same were last sheared until they were sold off fat or taken out of the parish for sale, or any other purpose, before the next shearing time.

AND

AND THEREUPON ORDERED the defendants, the occupiers of lands in the parish, except the defendant *Mitchell*, to severally account with and pay the plaintiff for the agistment tithe of all such sheep so by them kept and depastured on their lands in the parish during the time demanded by the bill; and also all other agistment tithe for unprofitable cattle by them kept, fed, and depastured within the time aforesaid.

THE COURT also ordered the defendant *Mitchell* to account for the agistment tithe only for unprofitable cattle kept, fed, and depastured on the lands by him occupied within the parish during the said time;

THE COURT also ordered the defendants to pay the plaintiff his costs of this suit as to such agistment tithe.

THE COURT also ordered the bill, as to such sheep, agistment tithe demanded thereby against the defendant *Mitchell*, to be dismissed with costs to be taxed for the said defendant; and as to all other titheable matters demanded thereby against the defendants, the occupiers, to be dismissed with costs; and, as against the bishop of *Lincoln*, to be likewise dismissed without costs; and, as against the lessees of the rectory, with costs as to all matters thereby demanded, except those for the agistment tithe of sheep. The cause to be further heard upon the report.

The deputy remembrancer made his report, dated the fifteenth of *June* last; and upon reading the said decree and report (without exceptions), and hearing counsel on both sides; the report was, on the fourth of *July* 1771, ratified and confirmed with subsequent costs; and the defendant *Harvey* and others ordered to pay to the plaintiff the several sums reported due from them respectively, in full of the agistment tithes of sheep, and barren and unprofitable cattle, viz. the defendant *Harvey* forty-five pounds ten shillings; *Jackson* one hundred and eleven pounds, nineteen shillings, and sevenpence half-penny; and *Savage*, seven pounds; and for costs, seventy-three pounds, five shillings, and sevenpence; remaining out of one hundred and fifty-one pounds, eight shillings, and one penny, after deducting therefrom eighty-five pounds, two shillings, and sixpence, the defendants costs.

WILLIS

against

HARVEY.

and, except as against *Mitchell*, decree the defendants to account accordingly.

*Mitchell* decreed to pay agistment tithe of unprofitable cattle.

Costs.

The bill, as to *Mitchell's* agistment of sheep dismissed;

dismissed, as against the bishop, without costs; and against the lessee with costs.

The report made and confirmed;

and the defendants ordered to pay the several sums reported to be due.



HILARY TERM  
9. GEO. 3.

WRAY *against* JOCELYN.

*Essex*, 26th January 1769.

The vicar of *King's Hatfield*, in *Essex*, is entitled to tithes in kind of all wood and underwood felled and cut in *Poplars Wood* and in *Carter's Grove*, situated in the *Brunsend Quarter* of the said parish.

See *Wray, v. Barrington*, 24th February 1775, Hilary Term, 15. Geo. 3; and *Trinity College v. Barrington*, 25th November 1784, Michaelmas 25. Geo. 3.

THE bill stated, that about the year 1753, the plaintiff was instituted and inducted into the vicarage of *King's Hatfield*, otherwise *Hatfield Broad Oak*, in the county of *Essex*, and entitled to all the small tithes arising therein, particularly to the tithes in kind of wood fallen in a certain district called *Brunsend Quarter*; that the defendant *Jocelyn* was then owner of several woods and wood grounds lying in *Brunsend Quarter*, and particularly of two woods, called *Poplars Wood*, and *Down Wood* or *Carter's Grove*; that about the year 1760 he had cut large quantities of wood and underwood in *Poplars Wood*, and had sold the same; and that the tithe thereof was worth ten pounds; that, in the year 1764, he had cut from *Down Wood* or *Carter's Grove* large quantities of underwood, and sold the same; and that the tithes were worth eight pounds; that he had frequently applied to the defendant to account for the tithes of such wood and underwood, which he had refused to do, or to make him any satisfaction for the same; that there was not nor ever had been any exemption from the payment of such tithes, nor any ancient *modus* or composition whatsoever in lieu thereof; but that the said defendant and his ancestors, and all other owners and proprietors of wood or wood grounds within the said district of *Brunsend Quarter*, had constantly and until then set out and paid to him and his predecessors, vicars thereof, the tithes in kind for all wood fallen there, and sold or otherwise disposed of; that the said defendant had frequently paid him tithe in kind for wood fallen by him in *Poplars Wood*, *Carter's Grove*, and *Newhall Wood*, all lying in the said district, and that he was indebted to him in the sum of eighteen pounds for the said tithes. The bill therefore prayed, that the defendant might set forth a full account of the wood and underwood cut and fallen in the said two woods, and sold by him in 1760 and 1764, and how much the tithes thereof amounted to; and that upon a fair account he might be decreed to pay to the plaintiff such sum as should be due to him.

The defendant *Jocelyn* admitted that the plaintiff was vicar of the parish, and that he served the cure thereof; but whether he was entitled as such to all the small tithes and to the tithes in kind of wood fallen in *Brunsend Quarter*, he knew not; but insisted, that the tithe of wood was a great and not a small tithe, and that the vicar could not be entitled thereto except by ancient usage, endowment, or prescription. He admitted, that from the year 1742 he had been, and then was, owner and occupier of the said three woods; that he had cut down some part of them at two different times; and said that he had paid the

the plaintiff the tithes thereof in his own wrong; that in the years 1760 and 1764, he had cut down other parts of the said woods, but did not pay the plaintiff the tithe thereof, or make him any satisfaction for the same, the plaintiff not producing any endowment. He also said, that he did not pretend to set up any *modus* or composition for the same.

WRAY  
against  
JOCelyn.

The plaintiff, by his amended bill, charged, that the master, &c. of *Trinity College*, in *Cambridge*, and *John Barrington*, had combined with *Jocelyn*, and that they pretended that if such tithes were due they were due to *Trinity College*, who had the rectory impropriate of the said parish, or to the defendant *Barrington*, as lessee of the great tithes of the said parish under the said college, and that they or one of them set up some right or claim thereto. The bill therefore prayed, that the college and *Barrington* might set forth their claims and right to the tithes of the said underwood so cut and fallen by *Jocelyn*.

The defendant *Jocelyn*, by his further answer, said, that he did not pretend that the tithe of wood within the said parish and district was not of right due to any person whatsoever; but that the tithes of underwood had never been paid or demanded by any person for wood cut in any other part of the said parish except *Brunsend Quarter*, and that there were other woods belonging to other persons within the said quarter, for which tithes had not been demanded; and therefore, he submitted whether any tithe of wood was of right due within the said parish or district. He denied, that he pretended that the said tithes were due to the college as rectors of the said parish, or to their lessee, and said that he knew nothing of their right or claim to the said tithes; but insisted, that the plaintiff was not entitled to tithe of wood in the said district in the manner he claimed them.

The college admitted, that the plaintiff was vicar of the parish, and said, that they believed he might, by some ancient endowment, usage, custom, or prescription, be entitled to receive all the vicarial or small tithes there usually received or compounded for; but whether to the tithes in kind of wood fallen in *Brunsend Quarter*, or any composition in lieu thereof, they knew not. They further said, that they were the owners of the said rectory appropriate, and by indenture, dated the twentieth of *January* 1761, had demised to the defendant *Barrington* all their rectory or parsonage, with all manner of tithes of *Hatfield Heath*, *Mann Wood*, *End Wood*, *Row End*, and *Busb End*, and all tithes whatsoever belonging to the said rectory, with tithes of corn, grain, and other tithes whatsoever in the said *Brunsend Quarter* (except that there was reserved to the said college all woods, underwoods, and timber trees then growing on the said premises) to hold for twenty years; and that,  
by

WRAY  
against  
JOCelyn.

by means thereof he was entitled to all tithes of which the vicars had not been endowed, or to which they were not entitled by custom or prescription. They further said, that they knew not whether *Jocelyn* had paid any tithe wood or composition to the plaintiff of the said woods, or whether the plaintiff or any former vicar had received the same; but that if such tithes were not payable as aforesaid to the vicar, nor discharged by custom from payment of tithes, the defendant *Barrington* would be entitled, as their lessee. They further said, that they knew not that the said college had ever received any tithes in kind, or satisfaction for any of the woods in the said district, or that the tithes of such woods had ever been paid to or received by their lessees; and therefore they did not set up any claim or title to the tithes of the said wood so fallen by *Jocelyn*, but disclaimed all right and title thereto.

The defendant *Barrington* said, that he believed that the plaintiff was vicar of the parish, but not that he was entitled to all the small tithes or the tithes in kind of wood arising or fallen in *Brunsend Quarter*, or particularly to the tithes of wood there belonging to *Jocelyn*, for that wood being a great tithe, and not a small tithe, a vicar could not be entitled thereto, but by endowment or prescription; and that unless the plaintiff could support his right by usage, endowment, or prescription, he the defendant claimed such tithe of wood under the lease of the college of common right. He set forth his lease from the college, dated the twentieth of *January* 1761, whereby they granted him all manner of tithes belonging to the rectory of the said parish, paying the yearly rent of twenty-six pounds, eight shillings, and tenpence halfpenny, and several other sums payable to the vicar of the parish for his pension; and insisted, that by virtue of such lease he was entitled to all tithes, both great and small, in the parish, and to tithes in kind of wood fallen there. He also insisted that, as lessee, he was so entitled of common right; that the several payments and stipend to the said vicar was to be taken in full of all dues whatsoever to the vicar. He admitted that he had never collected the same. He also admitted, that there was such a place as *Brunsend Quarter*, and that *Jocelyn* had cut down wood therein, and he insisted on the tithe of the same accordingly, whether it was a great or small tithe.

The plaintiff replied; the defendants rejoined; and witnesses were examined on behalf of the plaintiff only; and upon hearing counsel and reading several depositions; and on full hearing of the matter;

THE COURT ordered the defendant *Jocelyn* to pay all the tithes to the plaintiff demanded by the bill, to wit, four pounds, ten shillings, for his tithe of the underwood cut down by him in



1760 in *Poplar's Wood*; and four pounds, sixteen shillings, for his tithe of the underwood cut down by him in 1764 in *Carter's Grove*; the plaintiff waiving any account of the tithes of wood and underwood to be taken before the deputy remembrancer, *Jocelyn* consenting to pay the two sums aforesaid in lieu of the tithes thereof, and which he admitted by his answer to be due to the plaintiff.

WRAY  
against  
JOCELYN.

THE COURT further ordered *Jocelyn* and *Barrington* to pay to the plaintiff his costs of this suit to be taxed; that the plaintiff do pay to the master, &c. of *Trinity College*, in *Cambridge*, their costs of this suit, according to the course of the court; and that then *Barrington* do pay the same over again to the plaintiff.

THE COURT FULL.

### HOWLEY against VENABLES.

*Hampshire, 9th February 1769.*

HILARY TERM  
9. GEO. 3.

THE bill stated, that the plaintiff was, in *July 1757*, duly presented to the vicarage of *Sutton*, otherwise *Bishop's Sutton* in the county of *Hants*, and that he was thereby, or by some ancient endowment, prescription, or usage, entitled to the tithes of all titheable matters and things yearly arising therein, except of corn, grain, and hay, especially to the tithe of clover seed, rye grass seed, saintfoin seed, and all other grass seeds, in kind; that the defendant *Hale*, in the year 1766, occupied a farm in the parish, and sowed therein clover grass seed, rye grass seed, saintfoin seed, and divers other grass seeds, which, when ripe, he cut and threshed for seed, and converted it to his own use, without setting out the tithes thereof, or making the plaintiff any satisfaction for the same; that he also had on his said farm during the said year divers other titheable matters, the tithes of which he had refused to discover and pay. The bill therefore prayed, that the defendant might account with the plaintiff for the tithes aforesaid; that the plaintiff's right to such tithe, as vicar, might be established; and that the defendants *Venables* and *Rivers* might refund and pay to him what they had severally received from the defendant *Hale* and the other occupiers of land in the parish for the tithes of grass seeds at any time since the plaintiff had been vicar thereof.

The vicar of *Bishop's Sutton*, in *Hampshire*, claims the tithes of clover seed, rye grass seed, saintfoin seed, and other artificial grass seeds, in kind, and prays that his right thereto, as small tithe, may be established.

The defendants admitted, that the plaintiff was vicar, and had duly served the cure.

The defendants admit the plaintiff is vicar.

The defendant *Venables* said, that *Queen Elizabeth*, by her letters patent under THE GREAT SEAL OF ENGLAND, dated the second of *December*, in the thirtieth year of her reign, had rectory, and all the tithes thereto belonging, granted

The defendant *Venables* says, that *Queen Elizabeth* leased the to *T. Clarke*.

Howley  
against  
Venables.

that *James the First* granted the reversion in fee of the said rectory, together with all the great and small tithes thereof to *Crew* and *Starkey*, and that the same had been, by mesne conveyances, vested in her.

She admitted, that the vicars had been permitted to receive some small tithes, but denied their right thereto ;

and insisted, that such a usage could not prevail against the express words of the grant ; or if it could, it only extended to such tithes as the vicars had received ;

and that no vicar had ever received the tithes of grass seed ; but that, on the contrary, she and her predecessors had invariably received them under the said grant.

The defendant *Rivers*, the lessee of the impropriatrix, denies the vicar's right to the said tithes of grass seeds ;

granted to *T. Clarke* and others all that the rectory of *Bishop Sutton*, with its rights, &c. formerly part of the possessions of *John*, late *Bishop of Winchester*, and all and singular houses, lands, meadows, tithes of garb, blade, grain hay, wool flax, hemp, lambs, and all her tithes whatsoever, as well great as small, and all oblations and emoluments whatsoever to the said rectory belonging ; that *James the First*, by his letters patent dated the twenty-ninth of *October*, in the second year of his reign, granted to *A. Crew* and *W. Starkey* and their heirs, the said rectory and church of *Bishop Sutton*, &c. to hold in fee ; that the said estate and interest of them in the said rectory became, by divers mesne conveyances, vested in her, and that she was seised thereof in fee simple, together with all the tithes both great and small, and all oblations, &c. ; and she denied, that she had ever heard, except by the bill, that the plaintiff or his predecessors vicars of the said parish were, or had been, endowed with any tithes whatsoever within the said parish ; but she said, that she believed that they had been permitted to receive, and had from time immemorially received, some small tithes yearly arising therein. She submitted, however, to the court, whether such usage (in case the plaintiff could prove the same) could or ought to be set up against the express grant of *all tithes whatsoever* so granted by the said letters patent as aforesaid ; and if such usage could be set up against such grants as aforesaid, then she submitted, whether such usage could or ought to be considered as evidence of an endowment of any tithes whatsoever, save and except such tithes only as had been, from time immemorial, paid to the vicar of the said parish ; and she positively denied, that she knew that the tithes of clover seed, or of any other grass seeds sown in the parish, or any pecuniary satisfaction for the same, had ever been paid to the vicar ; and on the contrary insisted, that she, and all those whose estate she had in the said rectory, or their lessees, had, by virtue of the said letters patent or of one of them, constantly received in kind the tithes of all clover seed, rye grass seed, and saintfoin seed, and of all other grass seeds ; and also the tithes of the seeds of turnips in the said parish, or a recompence for the same.

The defendants *Rivers* and *Hale* denied, that they knew that the plaintiff or his predecessors vicars of the parish was or were endowed with any tithes whatever therein ; but they said, that they believed that he and they had been permitted to receive, and had received some small tithes yearly arising therein ; and submitting to the court whether such usage could or ought to be considered as an evidence of the endowment of any tithes whatever, save such only as had been, for time immemorial, paid, they denied that, to their knowledge, the plaintiff

plaintiff or his predecessors had ever since received the tithes of clover seed, rye grass seed, and saintfoin seed, or any other grass seed in the said parish, or any recompence for the same, averring that such tithes had, on the contrary, been constantly received by the impropiators or their lessees.

Howley  
against  
Venables.

The defendant *Rivers* said, that the defendant *Venables* had demised to him for twenty-one years, along with his farm, all that the parsonage impropriate of *Bishop Sutton*, and all tithes whatever thereto belonging; that he had, by virtue thereof, received the great tithes, and all the tithes of clover grass seed, rye grass seed, saintfoin seed, and all other grass seeds in the said parish, from the year 1758: and he set forth a full account of the tithes of grass seeds when taken in kind, and when let, and for what rent, and an account of the grass seeds in 1766 sown by him on his lands, and the values thereof, and of the tithes. He also said, that in *December* 1766, and not before, the plaintiff applied to him, and claimed the tithes of all grass seeds grown in that year; but that he had refused to pay, or to make him any satisfaction for the same. He also said, that he had paid the plaintiff a composition for all his small tithes to the year 1766 inclusive, and had receipts for the same; and he denied, that he insisted on such receipts in bar of the plaintiff's demand for the tithe of grass seeds; but submitted to the court, whether the plaintiff was entitled to the same or not.

and says, that the defendant *Venables* had demised the same to him.

The defendant *Hale* said, that he had rented a farm in the parish ever since the plaintiff had been vicar; but that he had never kept any account of the tithe of the grass seeds which had grown thereon, the same having been taken in kind by the defendant *Rivers* until the year 1757, he having from that time rented the great tithes of his said lands, together with the tithes of the grass seeds, at one gross rent, without distinguishing one tithe from the other. He also said, that he had paid the plaintiff two pounds, sixteen shillings a year as a composition for his small tithes for the years 1764 and 1765, but had made no express agreement with him for the year 1766, expecting that, as the plaintiff had never given him any notice to discontinue the said composition, he would continue to accept it, and that if he had given such notice he should have set out his tithes in kind, and tendered the same to him.

The defendant *Hale* says, that he had paid his tithes to *Rivers*.

The defendant *Venables* admitted, that she had executed the indenture to *Rivers*; but denied, that she had received any tithes whatever in the parish, or any satisfaction for the same, other than the rent therein mentioned. She admitted, that the plaintiff had applied to her for the tithe of clover seed and other grass seeds, which she had refused to pay; for that she was impropriatrix of the parish, and the tithes of all grass seeds belonged to her as impropriatrix, by virtue of the said letters

The impropriatrix admits, that *Rivers* is his lessee; and insists on his right to receive the tithes of grass seeds.



Howley  
against  
Venables.

patent; that she had accordingly always received the same with the great tithes, and had let them therewith at one yearly rent. But although she insisted, that she had a just right thereto under the said grant and the constant enjoyment which had been had thereof under the same, she submitted to the consideration of the court whether these tithes were to be deemed great or small.

The defendant  
*Hale* admits, that  
he did not pay  
the plaintiff his  
tithes.

The defendant *Hale* admitted, that he had taken and converted to his own use the tithes of all the titheable matters and things which grew on the lands he occupied in the year 1766; and said, that he had set forth a true account thereof, except the great tithes and the tithes of grass seeds.

The cause  
heard.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; when upon hearing counsel for all parties; and reading several depositions for the defendants; the records from the office of the lord treasurer's remembrancer of this court of the inrollment of a grant from *Queen Elizabeth* of the rectory of *Bishop Sutton*, dated the second of *December*, in the thirtieth year of her reign; the inrollment of a grant from *James the First*, in the second year of his reign; and on full debate of the matter;

The tithes of the  
grass seeds de-  
creed to the vi-  
car;

THE COURT declared, that the plaintiff, as vicar of *Sutton*, otherwise *Bishop Sutton*, was entitled to the tithes of clover seed, rye grass seed, saintfoin seed, and of all other grass seeds yearly arising, renewing, or increasing within the said parish, or the titheable places thereof; AND THEREUPON ORDERED the defendant *M. Rivers* to account for the full value of the tithes, as well of the several grass seeds which he had on the lands by him occupied within the parish as of the several grass seeds which grew upon the lands occupied by any other person in the parish which had been paid to or received by him, as lessee of the impropriatrix, for and during the space of six years next before *Hilary Term* 1767, that being the term in which the bill was exhibited.

and the defend-  
ants ordered to  
pay accordingly,

THE COURT also ordered *R. Hale* to account for the tithes of the several grass seeds which grew on his lands during the time aforesaid, which had not been paid by him, to *M. Rivers*, as lessee of the tithes.

THE COURT further ordered, that *R. Hale* do pay to the plaintiff two pounds, sixteen shillings, being the composition due from him for his small tithes in 1766.

with costs.

THE COURT also ordered the said defendants to pay the plaintiff the costs of this suit, to be taxed, &c.

HULSE *against* MUNK.HILARY TERM  
9. GEO. 3.

Kent, 9th February 1769.

THE Bill stated, that by indenture dated the twenty-fifth of March, in the year 1762, between the Archbishop of Canterbury and the plaintiff, the Archbishop of Canterbury granted to the plaintiff, his executors, &c. all that the rectory of Appledore, in the county of Kent, together with the glebe lands, all rents and profits thereto belonging, and all the tithes of Beckard and Kite, otherwise Beckett and Kite, excepting and reserving to him and his successors the advowson of the said vicarage, to hold the said parsonage and premises from the twenty-fifth of March aforesaid, for twenty one years; that, by virtue thereof, the plaintiff had been in possession of the said rectory and appurtenances ever since, and was then entitled to the tithes of all corn, grain, and hay, yearly arising therein or in the titheable places thereof; that the defendant Munk and others had, ever since the year 1765, occupied lands therein, and had, for two years respectively, gathered corn, grain, and hay therefrom, the tithe in kind of which they had refused to pay; and, by combination with the defendants Auslin and Thatcher, who were the owners of the said lands, and the defendant Disney, who was the vicar of the parish, pretended that no tithes in kind were due for corn, grain, and hay, but a yearly sum in lieu thereof. The bill then further stated, that the plaintiff and the former lessees of the rectory had sometimes, for convenience, accepted a yearly pecuniary payment in lieu of the tithes of corn and grain, that is to say, four shillings an acre for wheat and two shillings an acre for lent corn; but it denied that such sums had been accepted as *modus*, but only as *temporary compositions*; and insisted, that the monies had been expressed to have been so received in the receipts given for the same; and that they had not been continued for any length of time, nor with any certainty. The bill also stated, that tithes of corn and grain had been formerly, and within the memory of man, paid in kind within the said rectory. It then stated, that the plaintiff had determined such *compositions* in the months of May, June, and July 1765, by giving public notice, and also by letters or notices to the occupiers of land within the rectory; and that notices had been particularly given to the defendants the occupiers that the plaintiff intended to take his tithes in kind. The bill then charged, that there were in the custody of the Archbishop of Canterbury two ancient surveys of the estate and revenues of the said archbishopric, the one dated in 1616, the other in 1647; and that in both of the said surveys all or most of all the *modus* in lieu of tithes which were payable within the said rectory and vicarage were mentioned; but that no mention was therein made of any *modus* payable in lieu of the tithes of corn or of any other tithe within the said rectory; that it

The lessee of the rectory and tithes of Appledore, in Kent, claims the tithes of corn, grain, and hay, in kind.

HULSE  
against  
MUNK.

appeared by another entry, in 1647, that the tithes of the said rectory were then valued at thirty seven pounds a year; that it also therein appeared that the yearly payments which had been made heretofore, had been accepted in lieu of tithe corn and grain, and not in lieu of tithe hay; that the reason why tithe hay had not been demanded by former lessces was owing to the small quantity of hay that had been made within the rectory; and that the *modus* pretended by the defendants to be payable to the vicar in lieu of tithe hay and all vicarial tithes, was in reality payable only in lieu of vicarial tithes, and not in lieu of tithe hay. The bill then averred, that none of the lands within the said rectory were exempt from the payment of tithe hay; that tithes of hay had been paid in kind, or a satisfaction made for the same, within the time of memory, and particularly from all or most of the lands then in the occupation of the defendants. The plaintiff therefore insisted, that he was well entitled to tithes in kind of all the corn, grain, and hay arising from the lands in the said rectory in the defendant's occupation; and that they ought to set out the same in kind, or make him satisfaction for the same. The bill further stated, that *Disney*, the vicar, claimed an interest in the matters in question, and, alledging that he might be affected thereby, insisted that he ought to be made a defendant; and that *the archbishop* was entitled to the freehold of the said rectory, and also had an interest in the same; AND PRAYED that the said defendants might answer the premises; that an account might be taken of all the corn, grain, and hay which the defendants *Munk* and others had reaped and made from their lands in the said years; and that they might respectively pay to the plaintiff one tenth part of the value for his tithe thereof.

The defendant *Munk* says, that he paid the plaintiff a composition for his tithes in the year 1764, and that he did not give proper notice to determine the same;

Sets up a *modus* of four shillings an acre for wheat, and two shillings an acre for lent corn;

The defendant *Munk* admitted, that the plaintiff was the lessee of the rectory; that he was entitled to the tithes of corn and grain arising therein, or to something in lieu thereof; but denied that he was entitled to the tithes of hay; and he set forth the quantities of land he rented, and what he had grown thereon. He further said, that in the year 1764, the plaintiff had told him that he would take three shillings an acre round as a *composition* yearly for the tithes of every acre of corn and grass; that, in 1765, he caused the same to be cried in the church yard of *Appledore*; that on the twenty-eighth of June 1765, he gave notice in writing to the defendants, that he would take their tithes of corn and hay in kind, and that he gave the same notice in 1766. All the defendants said, that they had been occupiers of land in the parish for several years past; and that, from time immemorial, there had been and then was payable, and of right ought to be paid yearly, on the feast of *Saint Thomas the Apostle*, by the occupiers of lands and tenements therein, to the rector or his lessee, farmer, or tithe gatherer, a *modus* of four shillings for every acre of wheat, and two



two shillings for every acre of lent corn reaped within the said rectory, in lieu of the tithes of such wheat and lent corn yearly; that such *modus* had been from time to time accepted and taken by the rector or impropriator, or his lessee, in lieu of tithes of such corn and grain, until within these two years; that tithes in kind had never, to their knowledge or belief, been paid; that they had yearly, from the year 1764, offered to pay such *moduses* to the plaintiff, but that he had refused to receive the same, and had insisted on tithes in kind, with which they had refused to comply. They further said, that the plaintiff was not entitled to the tithe of hay, but that the vicar, for time immemorial, had been entitled thereto, or to a *modus* or customary payment in lieu thereof; that there had been immemorially paid, on the *Annunciation of the Blessed Virgin Mary*, to the vicar of the said parish for the time being, a certain *modus* of twelvepence an acre for every acre of moor land, and sixpence for every acre of upland lying within the said rectory, and so in proportion, by every occupier respectively, in lieu of tithe hay yearly arising from such lands respectively; that such *modus* had been immemorially paid and accepted; that, to their knowledge or belief, tithes of hay had never been tendered or paid in kind within the said rectory; that they, relying on the said *moduses*, had not set out their tithes of corn, grain, or hay, or kept any account of the crops thereof, but that they believed the tithes of wheat might yearly have been worth six shillings an acre; lent corn, three shillings; and hay in kind one shilling, and no more; that they were then and always had been ready to pay the plaintiff such *moduses* as aforesaid, in lieu of tithes of corn and grain in each of the said years; that they had paid the same, and that he had accepted thereof; but that they had not taken any receipts for the same, as such payments were regularly entered in the impropriator's book.

The defendant *Austin* said, that she was seised in fee of divers lands and tenements within the rectory; and that the said lands and tenements were in the occupation of the several defendants aforesaid, as her tenants.

The defendant *Thatcher* said, that he was seised in fee of divers lands and tenements therein, which were in the occupation of the defendant *Boon*, as his tenant;

The said defendants said, that they believed the plaintiff was lessee of the rectory, but insisted that he was not entitled to tithe hay; and that by custom there was paid, on the feast of *Saint Thomas the Apostle*, by the occupiers of lands within the said rectory, a *modus* of four shillings an acre of wheat, and two shillings an acre of lent corn, and so in proportion for a greater or less quantity than an acre; that such *moduses* had been accepted in lieu of the tithes thereof, until about two

HUTCH  
against  
MONK.

and insists, that the tithe of hay belongs to the vicar, and that there are *moduses* of 12d. an acre for moor land, and 6d. an acre for upland, in lieu thereof.

The owners of the lands admit the demises to the other defendants;

and insist on the said *moduses*.

HULSE  
against  
MUNK.

years since, and that tithe of corn and grain had never been paid in kind; that their several tenants had usually paid the said *modus* to the plaintiff up to the feast of *Saint Thomas* 1764, and that they were ready, and had offered since to pay him the same, but that he had refused to accept thereof; that the said plaintiff was not entitled to any tithe hay, but that the vicar, for time immemorial, had been, and then was entitled to a *modus* on the feast of the *Blessed Virgin Mary* of one shilling an acre for moor land, and sixpence an acre for upland, and so in proportion, in lieu of tithes of hay yearly, and of all other vicarial tithes in respect thereof; that such *modus* had been paid and accepted accordingly, and that no tithe of hay had ever been paid in kind.

The vicar says, that he has received the said *modus* in lieu of tithe hay, but that he does not claim the same;

The defendant *Disney* said, that he then was, and for forty years past had been vicar of *Appledore*; that such *modus* of twelvepence and sixpence had been paid in lieu of all vicarial tithes whatsoever of pasture land in the said parish; that he had accordingly, from time to time, received such respective yearly sums from the occupiers there, in lieu of all vicarial tithes; that he did not claim any right whatever to any tithe in kind from the said lands other than as aforesaid, or any tithes of pasture lands in the said parish; that the late *Archbishop of Canterbury* was seised of the rectory, and of all tithes of corn, grain, and hay; and that he granted such lease to the plaintiff. He admitted, that the defendant *Munk* and others were occupiers of lands within the parish; that they had some dispute with the plaintiff on account of their tithes; that they insisted that the said *modus* were payable to the vicar in lieu of tithe hay and all other vicarial tithes; and that he laid no claim to the tithe of hay arising on any lands within the said parish, nor to any satisfaction whatsoever in lieu of such tithes, unless it should appear that the *modus* claimed by him were payable in lieu of tithe hay.

unless it should appear that he is entitled thereto.

The *Archbishop of Canterbury* admits, that the plaintiff is lessee of the rectory, and hopes the defendants will be decreed to account.

The *Archbishop of Canterbury* said, that his predecessor was heretofore, and that he then was, in right of the said archbishopric, seised in fee simple of the rectory of *Appledore*, with the *glebe lands* and appurtenances thereto belonging; that such lease had been granted to the plaintiff; and that he hoped the court would decree the defendants to account with the plaintiff and make him a satisfaction for the tithes of all the corn, grain, and hay, which they had on such lands since the date of the said lease, and for which they had not already made satisfaction; unless it should appear that a *modus* or *modus*es was or were rightfully payable in lieu of such tithes respectively.

The cause heard.

The plaintiff replied to the answer of the defendants the occupiers; and they rejoined; and witnesses were examined only on the part of the said defendants; and now upon hearing counsel for all parties; and reading the depositions to the seventh interrogatory for the defendants; and on full debate of the matter;

THE

THE COURT ordered the bill, so far as the same related to the defendants *Austin* and *Thatcher*, owners of the estates, to be dismissed with costs.

HULSE  
against  
MUNK.

The bill dismissed

against the owners of the land.

THE COURT declared, that the two several *modus*es, as set up by the defendants the occupiers, of four shillings for every acre of wheat, and two shillings for every acre of lent corn, were too rank; AND THEREUPON ORDERED the defendants the occupiers to account with the plaintiff for all their several tithes in kind of corn and grain which they severally had growing and arising from their said respective lands in the said parish in the said two years, and pay what should appear to be due on such account, with costs.

The *modus*es for wheat and lent corn declared to be rank.

THE COURT also ordered the deputy, in taking such account and taxing costs, to enquire, whether the plaintiff had given any and what notice to the defendants the occupiers to pay their several and respective tithes in kind for the year 1765, and at what time or times in particular such notice had been given; and that if it should appear to him that the plaintiff had not given proper and reasonable previous notice, then, in taking the said account, to charge the defendants with the *modus*es insisted upon by them in their answer to the said bill for that year only.

The deputy directed to enquire, whether the plaintiff gave proper notice to determine the composition.

THE COURT further ordered the bill, so far as the same related to the demand for tithe hay, to be dismissed with costs.

The bill dismissed as to the demand of tithe hay.

PARKER, *Chief Baron*.

SMYTHE, *Baron*.

ADAMS, *Baron*.

PERROTT, *Baron*.

# EMMETT against WHITE.

Norfolk, 9th February 1769.

HILARY TERM  
9. GEO. 3.

THE bill stated, that the plaintiff was owner of eight marshes, called *Upper Darley*, *Lower Darley*, *Great Darley*, and *Little Darley*, and a small rond to the last marsh belonging, *Good's Marsh*, *Holly Holmes*, *Great Mill Marsh*, and *Little Mill Marsh*, and the ronds belonging to the *Great Mill Marsh*, in the parish of *Freethorpe*, in the county of *Norfolk*; that *Great Mill Marsh* and *Little Mill Marsh*, with the ronds belonging to the former, were then, and for some time past had been, held by the plaintiff *Bately* as tenant to *Emmett*; that for all the said premises there had been, time out of mind, a certain ancient *modus* of one pound, nine shillings, and twopence, payable yearly, on every first day of *August*, according to the computation of time

The vicar of *Freethorpe*, in *Norfolk*, is only entitled to a *modus* of 11. 9s. 2d. a-year, in lieu of the tithes of eight marshes mentioned in the bill.

See *White*  
Read ante,  
page 158.



EMMETT  
against  
WHITE.

commonly used in this kingdom before and until the alteration of the old stile, called *Lammas Day*, and on every twelfth day of *August*, according to the computation of time now used in this kingdom immediately after and ever since the alteration of the said old stile, now commonly called *Old Lammas Day*, in every year, in lieu of tithes in kind of all the said premises, to the vicar of the parish of *Freethorpe*; that the plaintiff *Emmett* and his ancestors, and those under whom he claimed, who had been owners and proprietors of the said eight marshes, had, time out of mind, paid a *modus* of one pound, nine shillings, and twopence, as before mentioned, in lieu of the tithes in kind due annually for the said marshes to the several vicars of *Freethorpe* for the time being respectively, and in particular to the defendant *White*, who then was, and for fourteen years past had been, vicar thereof; that the said defendant *White* the vicar, and the defendant *Leather*, the patron of the said vicarage, insisted, that the constant payment of the said *modus* did not bar the claim of tithes in kind for the said marshes; that many of the ancient inhabitants of the said parish, who well knew the said marshes and ronds, and that the said ancient *modus* had been many years paid in lieu of tithes, were old and infirm. The bill therefore prayed, that the said ancient *modus* of one pound, nine shillings, and twopence, might be established; and that the plaintiffs might be at liberty to examine their witnesses relating thereto *in perpetuam rei memoriam*, &c.

The defendant *White* said, that he had been vicar of the parish for several years past; that *Emmett* was owner of the said eight marshes; and that part of them was held by *Bately*; but he denied that he knew, otherwise than from hearsay, that the said ancient *modus* had been immemorially paid in the manner, and at the times as stated in the bill; and he said, that having inspected the most ancient terriers belonging to the said parish which could be found in the office belonging to the *Bishop of Norwich's* court, the oldest of which appeared to be dated in 1709, he had found; in some of such terriers, an entry of the several *moduses* or customary payments as due and payable to the vicar of *Freethorpe* for the several marshes or part of the marshes after-mentioned, viz. for part of *Upper Darley*, three shillings and fourpence; *Lower Darley*, three shillings and fourpence; *Great Darley*, eight shillings and fourpence; *Little Darley*, four shillings and sixpence; the north part of *Good's Marsh*, six shillings and eightpence; and for *Little Mill Marsh*, three shillings and fourpence; in the whole, one pound, nine shillings, and sixpence; that he had also found in the said terrier an entry of a customary payment of eight shillings and fourpence as due and payable for *Great Mill Marsh*, being one of the eight marshes; but that he had never received the same, though they had been demanded by him as vicar. He further said, that finding by the  
said

said terriers that the customary payments for the said marshes, or parts thereof, amounted to one pound, nine, shillings, and sixpence, instead of one pound, nine shillings, and twopence, he had refused to accept the same in lieu of tithes; but that he had afterwards agreed to accept it for the three years for the marshes called *Langford Marshes*; but whether they were for the payment of the said eight marshes was not certain; and he submitted to the Court, that *Holly Holmes Marsh*, being one of the eight marshes, was not comprehended in the terriers; so that it did not appear that any *modus* in lieu of tithes was due and payable for the same to the vicar. He denied, that he had ever made any demand of tithes in kind of the plaintiff, or any of his tenants, for the said marshes, other than the said annual payment of one pound, nine shillings, and sixpence, which he apprehended he had a right to receive; and he left the plaintiff to his proof to establish the said payment of one pound, nine shillings, and twopence.

EMMETT  
against  
WHITE.

The defendant *Leathes* said, that he believed that *Emmett* was owner of the eight marshes; and that *Bately* held part thereof as tenant to him. He admitted, that for all the said premises there had been, time out of mind, a certain ancient *modus* of one pound, nine shillings, and twopence, payable yearly at *Old Lammas Day*, in lieu of tithes in kind of all the said premises to the vicar of *Freethorpe*; and believed, that *Emmett* and his ancestors had paid the same time out of mind, in lieu of tithes in kind for the said eight marshes to the several vicars respectively.

The plaintiffs replied; the defendants rejoined; and witnesses were examined on the part of the plaintiffs, one of whom was cross examined on the part of the defendant *White*: and now upon hearing counsel for all parties; and reading the proofs taken in the cause;

THE COURT ordered and decreed the said *modus* of one pound, nine shillings, and twopence, paid yearly at *Lammas Day* as aforesaid, for and in respect of the said eight marshes and premises in the bill mentioned, to the vicar of the vicarage of *Freethorpe*, in full satisfaction of tithes in kind arising or renewing from or out of the said several marshes and premises, or any part thereof, to be confirmed and established as against *White* during the time he should continue vicar of *Freethorpe*, and absolutely established and confirmed as against *C. Leathes*, the patron of the vicarage; and that the defendants, or one of them, do pay to the plaintiffs their costs of this suit, to be taxed by the deputy remembrancer of this court, to whom it is hereby referred to tax the same.

THE COURT FULL.

ROCH

HILARY TERM  
9. GE9. 3.

ROCH *against* SUMMERS.

*Pembrokeshire, 21<sup>st</sup> February 1769.*

The rector of *Robestone West*, in *Pembrokeshire*, states, that the defendant had agreed to take a lease of the tithes of *Upper Robestone* and *Bramble Clofes*, but had refused to execute the same.

THE rector of *Robestone West*, in the county of *Pembroke*, claimed the tithes of corn, grain, hay, wool, lambs, milk, and all other great and small tithes therein; and stated, that the defendant being the occupier of *Upper Robestone Lands*, had, in the year 1756, applied to him for a lease of all the tithes arising on the said lands; that thereupon a memorandum in writing was, on the eighth of *June* 1759, entered into and signed by them, whereby he agreed to set and let to the defendant all the tithes, great and small, arising on *Upper Robestone*; and also the tithes, great and small, arising on *Bramble Clofes*, then in his occupation, to have and to hold for and during their joint lives, at twenty-seven pounds a-year, the payment to be made on *Michaelmas Day* yearly, with conditions, as stated in the said bill; that a lease was to be made thereof; but that the defendant had refused to execute the same, under pretence that the said agreement, as to the said lands, was become void and of no effect. The bill therefore prayed, that the defendant might be compelled to accept a lease of the said tithes; to execute a counterpart thereof, and to pay and satisfy all arrears of rent due or to become due for the said tithes during the continuance of such lease, according to the reservation therein mentioned,

The defendant says, he refused to execute it, for the reasons stated in his answer.

The defendant admitted, that the plaintiff was rector of *Robestone West*; that he might be entitled to the tithes mentioned in the bill; and that he had agreed to take a lease of the before mentioned tithes of the said premises, and had refused to execute the same for the reasons mentioned in his answer.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel; and reading the proofs in the cause;

The Court decree a specific performance.

THE COURT ordered the defendant to execute a lease, and account for the reserved rent for the arrear of tithes which had accrued due on the said premises, &c. and to pay the plaintiff his taxed costs.

PARKER, *Chief Baron.*  
SMYTHE, *Baron.*  
ADAMS, *Baron.*

LOVAT



LOVAT *against* GRIFFIN.*Staffordshire, 22d February 1769.*

HILARY TERM

9. GEO. 3.

THE bill stated, that in the year 1763 the plaintiff was duly presented by *Lord Hamilton*, the lawful patron, to the vicarage of *Sandon*, in the county of *Stafford*; that he was regularly instituted and inducted into the same; that by virtue thereof, and by some ancient endowment, prescription, usage, or other lawful ways and means, he had justly become entitled to one third part of the tithe in kind of all corn and grain growing in the said parish, on the side of a certain brook in the said parish to the north east and south of the said brook, next to *Sandon*, which said brook runs near and to the west of *Hardwick*; and also to the full tithe in kind of hay, wool, lambs, hemp, flax, pigs, geese, eggs, apples, and all other sorts of fruits, the *Easter* roll, the offerings at weddings, christnings, churchings, burials, and all other titheable matters arising in the said parish on both sides the said brook, as belonging to the vicarage thereof, excepting that certain *modus*es in lieu of the tithe of hay of certain meadows particularly mentioned in a terrier of the said parish for the year 1698, or in some other terrier or terriers of the said parish in the registry of the *Bishop of Litchfield and Coventry*, which *modus*es the plaintiff did not mean to controvert or impeach; and also excepting any other *modus*es in lieu of several species of small tithes. The bill also stated, that the defendants had, for four years past, occupied divers lands in *Sandon* and the titheable places thereof; that the parishioners, owners, and occupiers of lands in the said parish had, several years before the plaintiff became vicar, and when their lands neither grew so much corn and hay, or were of near so large an annual value as they then were, paid to the vicar a composition of one shilling in the pound of the yearly rent or value of the said lands, as a satisfaction for one third part of the tithes of corn and grain on the said *Sandon Side* of the said brook; and for the whole of the tithes of hay and other titheable matters (except corn) for and on account of the lands occupied by them on both sides of the said brook; that an abatement was made to the parishioners, owners, or occupiers of land on the west side of the said brook, in consideration that the vicar was not entitled to any tithes of corn and grain growing on the lands on the west side of the said brook; that the family of the *Hamiltons*, as impropiators of the rectory, were entitled to the whole of the tithe corn and grain on the said west side of the said brook, and to two-thirds of the tithe of corn and grain on the *Sandon Side* of the said brook, which they, for several years, gathered in kind, or otherwise compounded for; that the said *Lord Hamilton* was then entitled to the same, as impropiator thereof; that he had, for four years then last past, compounded with the several

The vicar of *Sandon*, in *Staffordshire*, is entitled to all the small tithes of the parish, either by *modus* or in kind; to one-third of the corn tithes arising on the *Sandon Side* of *Hardwick Brook*; to all the tithe hay on both sides of the said brook, except of certain meadows covered by *modus*es; and to the *Easter* offerings as stated in a book called the *Easter roll*.

LOVAT  
against  
GRIFFIN.

several owners or occupiers of arable lands therein for the several sorts of corn and grain growing thereon, at the following rates, viz. at the rate of four shillings by the acre for wheat, three shillings for barley, and two shillings for oats; which full composition he had received for the arable lands on the west side of the said brook; but for the arable lands on the *Sandon Side* thereof, he had received only two thirds of the said several rates, the vicar being entitled to one-third of all corn and grain on the said lands on the *Sandon Side*; that the aforesaid payment of one shilling in the pound was only by way of *composition*, and not established or intended as a *modus*; and as an evidence that the same had not been so paid or established as a *modus* time out of mind, the plaintiff charged, that by a book containing an account of the tithes and dues at *Easter* paid by the parishioners of the said parish to the vicar thereof, viz. to *Mr. R. Afle*, who was vicar of the said parish for thirty years from 1635 to 1665, and who died in the said last-mentioned year, as appeared by the register books of burials belonging thereto, it was evident, that the parishioners, owners, or occupiers of lands therein did, in his life, pay and account to him, as vicar, for tithes in kind of one-third part of the corn and grain on the *Sandon Side*, and for the whole of the tithes in kind of hay and all other titheable matters (except corn) arising therein on both sides of the said brook, excepting that certain *modus*es or customary payments had been made for the tithe hay of some particular meadows, and for some species of small tithes; that in the said book there were, among other things, entries in the words and figures following, viz. "Corn on the *Demesne Lands*.—OATS, Nine score strike sowed, three strike and an  
" half goes to a day's work, which comes to about fifty day's  
" work, rated at one shilling and eightpence the day's work,  
" the whole comes to three pounds, fifteen shillings, the third  
" part to one pound, five shillings."—"BARLEY, Four score  
" and two strikes sowed, three strike to a day's work, comes to  
" twenty-seven day's work, rated at two shillings and sixpence  
" the day's work, the whole comes to three pounds, one shilling,  
" the one-third part to one pound and fourpence."—"WINTER  
" CORN, Fifty-five strike, sowed one bushel and a half, a strike  
" to a day's work, comes to about twenty-seven days work,  
" rated at three shillings and sixpence the day's work, the whole  
" comes to four pounds, fourteen shillings, and sixpence,  
" the one-third part to one pound, eleven shillings, and sixpence;  
" the third of all the corn, three pounds, sixteen shillings;  
" for all tithe wool and lamb, the lay rate, hay, mill, and  
" *Easter* roll, twenty one pounds, ten shillings, and sixpence;  
" for the horse grafs in *Sand Wood*, one pound, ten shillings;  
" for the lay of all foreign cattle, twenty-eight pounds, ten  
" shillings, the tenth whereof is two pounds, seventeen shillings;  
" *Church Field* herbage, thirteen shillings; *Easter* roll, seventeen

" shillings

LOVAT  
against  
GRIFFIN.

" shillings and fourpence ; wool, three pounds, four shillings,  
" and ninepence ; thirteen lambs, four pounds ; herbage, four  
" pounds ; herbage for *Orells Hays*, seven shillings and four-  
" pence ; and for herbage on the north side of *Gayton*, fourteen  
" shillings ; and for hay I gathered the same year, fourteen  
" shillings ; and from *Richard Cooke*, for herbage, twelve shillings ;  
" and for hay I gathered the same year, six shillings ; and from  
" *W. Clowes*, for herbage, ten shillings ; and for hay I gathered  
" from *Anne* the same year, four shillings ; which is all I  
" gathered from *Gayton* tenants. RA. ASTLE." And the  
plaintiff charged, that there were many other entries in the said  
book to the like purport and effect ; that soon after the plaintiff's  
induction into the said vicarage, from the many improvements  
therein, he found that the said composition of one shilling in the  
pound, which had been for some time paid by the parishioners,  
owners, and occupiers of land therein, in lieu of all tithes  
coming due from them to him, was greatly inadequate and  
inferior to what then ought to be paid by them to him ; and  
that therefore he did refuse to comply with the said composition  
of one shilling in the pound ; that after having given due notice  
thereof, he then entered into a new composition as well with the  
defendants as also with all the other parishioners, owners, and  
occupiers of land in the said parish, at certain prices by the acre  
for one-third of the various sorts of corn on the *Sandon Side*  
of the said brook, and for hay and all the said titheable matters  
(except corn) on both sides the said brook, upon the whole  
to the amount of one shilling and sixpence in the pound,  
or thereabouts, according to the improved value of the said  
lands, in full satisfaction of all tithes due to the plaintiff arising,  
&c. thereon ; that the defendants, and all the other owners or  
occupiers of the said parish, continued to pay the plaintiff  
the said new composition in lieu of tithes during the first two  
years that he was vicar thereof ; but that the defendants and  
many other of the parishioners then thought fit to refuse their  
new composition ; and that thereby the same became determined.  
The plaintiff therefore insisted, that he was entitled, in manner  
aforesaid, to tithes in kind for the last two years, they having  
refused to pay for that time the new composition, and having  
since that time cut down, subtracted, and carried away, corn,  
grain, hay, hemp, and flax, on both sides of the said brook.  
The bill accordingly prayed an account and payment for  
one-third part of all and every the tithes of corn and grain  
subtracted on the *Sandon Side* of the said brook, as also the full  
tithes of hay, wool, lambs, hemp, flax, pigs, geese, eggs, apples,  
and other small tithes, on both sides of the said brook, during  
the two last-mentioned years.

The defendants admitted, that the plaintiff was vicar, and  
entitled to all such tithes as had of right been payable to his  
predecessors ;



LOVAT  
against  
GRIFFIN.

predecessors ; but denied, that he was entitled to one-third or other part of the tithe in kind of all corn and grain on the *Sandon Side* of the brook, or to entire tithes in kind of hay on both sides the brook.

The defendant *Griffin* said, that he had, for four years past, occupied *Romer's Farm* ; that it had been in the tenure and occupation of him and his ancestors for ninety-two years ; that he had also, for twelve years past, occupied *Hardwick Farm*, two third parts of which farm lay on the western side of the said brook ; that one invariable sum of one shilling and eightpence yearly had been immemorially paid by the occupiers of *Romer Farm* to the vicar of *Sandon*, in lieu of all vicarial tithes arising thereon until the plaintiff became vicar ; and that he had divers receipts for the same ; but whether it was an ancient prescriptive *modus* for the said farm, or a *composition* only with the vicars, he knew not ; but that he hoped he should be able to prove it to be an ancient *modus* in lieu of vicarial tithes for the said farm ; and he insisted upon the same. He further said, that he had used formerly to pay to the vicar one pound, ten shillings, for the vicarial tithes of *Hardwick Farm* ; but that he had no receipt for the same ; and that he had never heard of any invariable sum being paid for the tithes of the said farm. He said, that in the year 1763 he made an agreement with the plaintiff for the lands part of the said farm on the *Sandon Side* of the brook, *viz.* two shillings an acre for the meadow land ; one shilling and eightpence for the clover land ; for wheat on the *Sandon Side* of the said brook, one shilling and fourpence an acre ; for barley, pease, and beans, one shilling ; for oats, eightpence ; two shillings and sixpence for a lamb ; and one shilling for a fleece of wool. He also said, that the ancient customary payments which had been made to the plaintiff's predecessors had been tendered to the plaintiff half-yearly for both the said farms for two years last past ; and he denied, that he had ever made any agreement with the plaintiff for the two first years after he became vicar for and after the rate of one shilling and sixpence in the pound, as suggested in the bill, but by the acre only, as before-mentioned. He also said, that he believed that the tenants of *Lord Hamilton* had, for two years only, agreed to pay the plaintiff in lieu of tithes at the rate of one shilling and sixpence in the pound of their respective rents.

The defendant *Pilbury* said, that he had, for four years past, occupied several farms, lands, tenements, gardens, and orchards, within the said parish, as mentioned in his answer ; and that he believed the sum of one pound *per annum* had been anciently and immemorially paid to the vicars of *Sandon* until the plaintiff became vicar, by the former occupiers thereof, for and in lieu of all the vicarial tithes of the said farm, &c. ; and he insisted upon

upon the same as an ancient prescriptive *modus* in lieu of tithes in kind for the said farms and lands.

LOVAT  
against  
GRIFFIN.

The defendant *Woolrich* said, that he had, during the said time, occupied several lands, tenements, and gardens, as set forth in his answer; but that the *Car Meadow* lay part in the parish of *Sandon*, and the other part in the parish of *Stone*; and that there were formerly paid to the vicar, in lieu of tithes, two pounds, sixteen shillings; but whether the same were paid as an ancient prescriptive *modus* or as a *composition* he knew not; but he hoped the same should not be impeached; and said, that he had only in his custody one receipt for the same.

The defendants *the Lees's* said, that they occupied several farms, lands, gardens, and orchards, as stated in the answer; and believed, that they and their ancestors the former occupiers thereof had always, and for time immemorial paid the former vicars seven shillings and sixpence half-yearly, for and in lieu of all vicarial tithes of the said farms and lands, until the plaintiff became vicar of the said parish; and they insisted on the same as an ancient prescriptive *modus* for them; but they said, that they had no receipt to shew.

The defendants *Griffin* and *Pilbury* set forth all and every the receipts for tithes or money in lieu of tithes in their custody.

And all the defendants set forth a full and true account of the corn, grain, hay, wool, lambs, and other titheable matters which had arisen on their farms and lands within the parish, and the values of the tithes thereof: and they said, that they did not know, except by the bill, that all the parishioners, owners, or occupiers of lands within the said parish did, at any time, pay a *composition* for tithes to any vicar thereof at the rate of one shilling in the pound, save that the said payment in lieu of tithes might amount to that sum according to the old rents; but that they believed that most of the farms and lands did not pay ninepence in the pound according to the old rents. They denied, that they had ever insisted that any certain sum of money had been paid to the vicar as a *modus* for the whole parish; but said, that they believed that some persons living out of *Sandon*, and occupying lands therein, had paid some additional sum of money to the vicars for herbage or herbage money. They also said, that they had never heard of *R. Astle* being vicar thereof; but that they had heard about the terriers, as stated in the bill.

The defendant *Pilbury* said, that he was in the occupation of the meadow below the house formerly in the occupation of *R. Lander*; and that in the terrier of 1698 it was expressly said to be covered by a *modus* of fourpence yearly in lieu of tithe hay.

The

LOVAT  
against  
GRIFFIN.

The defendants said, that the plaintiff did not at any time demand tithes in kind of them, or give them notice that tithes in kind should be set out for him; but that he claimed without any notice a sum of money in lieu thereof. They further said, that they had tendered to the plaintiff the ancient and customary payments of their respective farms and lands in lieu of the vicarial tithes thereof, half-yearly, for two years past; but that he had refused to accept of the same, and that they were still ready and offered to pay the same. They also said, that they believed that the *Hamilton family*, as impropiator of the rectory, was entitled to the whole of the tithes of corn and grain on the west side of the brook, and to two-thirds only on the *Sandon Side*; that they had gathered the same for several years in kind, or compounded; and that the present impropiator in like manner then compounded for the same. They admitted, that they had refused to pay or satisfy the plaintiff their several tithes in kind; and as to the tithes of corn and hay they insisted, that the plaintiff, as vicar, could only lawfully entitle himself to the same by endowment or prescription; but that no such endowment existed; and that, as the said tithes had never, in any instance, been taken or received by any vicar in kind, there consequently could be no *prescription* to entitle him to the same. They therefore submitted to the judgment of the Court, that the plaintiff had no just right to such tithes of corn, and grain, and hay; and with respect to the several other titheable matters insisted on the before-mentioned ancient *modus*; and prayed, that the same might be established.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides; and reading the answer and schedules thereto; an order to prove exhibits, &c. the same being terriers of the vicarage of *Sandon* exhibited at various visitations, and afterwards deposited in the registry of the *Lord Bishop of Litchfield and Coventry*, viz. for the years beginning 1602 and ending 1758; several depositions; an ancient book written and kept by *Ralph Afle*, a former vicar of the parish, containing an account of the tithes and dues at *Easter* paid by the occupiers of lands therein, as vicar thereof; an ancient register book belonging to the parish; an entry therein made of the burial of the said *R. Afle* in 1665, who was vicar thereof thirty years.

THE COURT declared, that the plaintiff, as vicar of *Sandon*, was entitled to one-third part of the tithe in kind of all corn and grain grown on the side next to *Sandon* aforesaid of a certain brook in the said parish running by or near a certain place there called *Hardwicke*; to all the tithe of hay in kind on both sides the said brook within the said parish, except the tithe hay of certain meadows, which was admitted by the plaintiff to be covered



covered with the *modus* set forth and mentioned in the said terriers for 1698, 1701, and 1705; to all manner of small tithes in kind throughout the said parish (except some species of small tithes which were admitted by the plaintiff to be covered with *modus* payable at or about *Easter* in every year), and to the *Easter* offerings, called the *Easter roll*.

LOVAT  
against  
GRIFFIN.

THE COURT thereupon ordered the deputy remembrancer to take an account of what was due to the plaintiff for one-third part of the tithes in kind of all corn and grain grown and produced on the farms and lands severally and respectively occupied by the defendants, on the *Sandon Side* of the said brook, from the twenty-fifth of *December* 1764; AND ALSO to take an account from the same time of what was due for the whole tithe in kind of all hay upon the farms and lands occupied by them on both sides of the said brook throughout the whole of the said parish (except for the tithe hay of a certain meadow below the house, which was admitted by the plaintiff to be covered with a *modus* of fourpence yearly); AND ALSO to take an account from the same time of what was due to the plaintiff for all the small tithes in kind which had arisen on the said farms and lands severally and respectively occupied by them throughout the said parish (except for those species of small tithes which the plaintiff admitted to be covered with *modus* payable at or about *Easter* in every year), and to the *Easter* offerings called the *Easter roll*; AND ALSO to take an account from the same time of what was due to the plaintiff from the defendants respectively for *Easter* offerings and all other customary payments; and that the defendants do pay to the plaintiff his costs of this suit, &c.

AMLER against JACKSON.

HILARY TERM  
9. GEO. 3.

Shropshire, 25th February 1769.

THE bill stated, that the plaintiff, as rector or impropriator of the parish and parish church or chapel of *Ford*, in the county of *Salop*, was entitled to all tithes, as well great as small, belonging to the said church or chapel, formerly part of the possessions of the college of *Battlefield*; and that he and his ancestors had, for time immemorial, received, as well all tithes and dues arising therein as all others that belonged thereto in the parishes of *Pentestbury*, *Hanwood*, and *Allerbury*, and in particular to the tithes of wood; that in the year 1764 the defendant had agreed with *T. Lee* for a large quantity of coppice wood then growing in *Birchley Coppice*, in the township of *Ford*, containing three hundred acres; for one timber tree, only one being then growing therein; for some asp trees growing in *Heath Piece*; for allers in *Blog Meadow*, excepting out of the said wood the same number of wagers as were left standing

The rector of *Ford*, in *Shropshire*, is entitled to the tithes of the coppice wood and black poles cut in *Birchley Coppice*.

AMLER  
against  
JACKSON.

when the coppice was last felled, and also six timber trees growing therein; that he had agreed to pay the said *Lee* for the same, as also to pay the plaintiff for the tithe thereof; that the said coppice so sold consisted partly of black poles, which were waggors left standing upon old stools the fall before, and partly of other coppice wood springing from such like stools, or the roots thereof, which the defendant felled, barked, faggoted, and disposed of promiscuously, and not separately, and so as it was impossible to distinguish the bark and faggots of the one from those of the other; but that he had contracted for the whole thereof as titheable wood; that some time before the same was felled, the plaintiff told the defendant that he and his ancestors had always received two shillings in the pound of the purchase money for all coppice and other woods belonging to the said rectory titheable to him and his ancestors, if the same were not paid in kind; and that he should insist on the defendants paying in like manner for all the titheable wood which he purchased; that the defendant promised to pay him accordingly, and had paid him in part eleven pounds, but had refused to pay the remainder, under the unfounded pretence that the plaintiff was not entitled to the same. But the plaintiff charged, that the whole wood was coppice wood (except the said one tree); and that as it all grew from old stools, it was titheable; that in case any of the wood so cut down was above twenty years growth, yet the same had been before cut down and sold as underwood, and therefore the same was liable to be tithed; that there were no timber trees purchased by the defendant in the said coppice, except the said one tree, which was of little value. The bill also charged, that all such trees as the defendant called *black poles* were mere coppice wood, and were only waggors left standing at the preceding fall, to be cut down at the next fall, as usual in that part of the country; that the same were so small as not to be able to support themselves upright when the other trees were felled from about them; that every one of the trees pretended to be timber by the defendant (except the said one tree) were germins, and sprung from old stools often before cut, or the roots thereof, and were not maiden trees; that it was the general custom of the country to let a number of waggors stand on every acre of wood at every fall to grow to black poles, but not to grow to timber, and to fell such waggors so grown to black poles at every succeeding fall; for that tithes had been constantly paid for black poles, and had been immemorially received by the plaintiff and his ancestors, and all others entitled to the tithe of wood, such black poles having always been deemed coppice or underwood, and not timber; notwithstanding which the defendant had absolutely refused to pay or make any satisfaction for the tithes of the said coppice wood farther or more than what he had already so paid as aforesaid. The bill therefore

prayed,

prayed, that the defendant might be decreed to pay to the plaintiff two shillings in the pound of the purchase money of the said wood, according to the general usage and custom in the parish, or such other reasonable satisfaction for and in lieu of the tithes thereof as the court should think proper.

AMER  
against  
JACKSON.

The defendant, by his answer, said, that *T. Lee* having some coppice wood and timber to dispose of in *Birchley Coppice*, had agreed with him for the purchase thereof for two hundred pounds, and to pay tithes for the same; and he set forth the agreement; and said, that pursuant thereto he had felled the same; that it consisted of coppice wood, young timber trees, the said oak tree, and asp trees; that he considered the said coppice wood and asp trees as titheable; and as the value thereof was one hundred guineas, he estimated the tithe at ten guineas; that as to the said timber tree and eight hundred and seventy-three young trees, he considered them as not titheable; and therefore, on the eleventh of *January 1765*, tendered the plaintiff eleven pounds; that the plaintiff took the same, and insisted on nine pounds more for the tithe, because he had given two hundred pounds for the whole, alledging that the whole, except the oak tree, was titheable, although they were above forty years growth. He admitted the plaintiff's right to the tithe of wood, so far as the same was titheable by law; but he insisted, that the said eight hundred and seventy-three timber trees which were upwards of forty years growth, and the said full grown oak tree, were not by law titheable. He also admitted, that they grew amongst the coppice wood; but insisted, that they were not coppice wood, because the coppice wood was under twenty years growth, and the said eight hundred and seventy-three black poles did not grow from old stools, but from their own roots, and were trees left at the former fall, growing from their own roots, and not from the stools of trees that had been cut down. He also admitted, that coppice wood and underwood had, for many years past, grown and been cut down periodically upon the twenty acres which were titheable and tithed; but he insisted, that it did not follow because the coppice and underwood, which were *sylva cadua*, growing thereon were titheable, that therefore trees growing there from their own roots, and upwards of twenty years growth, were *sylva cadua*, and titheable; and he submitted, whether such trees growing from their own roots, and not from old stools, if above twenty years growth, were titheable. He said, that the eight hundred and seventy-three trees were timber trees, and not coppice wood under twenty years growth; and that at the last fall they were above twenty years growth, and were then waggors, and were left uncut, with an intention that they should grow up to be timber trees. He averred, that the plaintiff had been fully paid for the tithe of the said coppice wood; and insisted, that he was not obliged by



ANLEY  
against  
JACKSON.

law to pay tithes for the said trees. He set forth the girth and size of the said timber trees, and how he had disposed of them; and said, that he believed that such sort of timber trees had never paid tithes in the said county; and he denied that to his knowledge all or any of the said trees had, at any time before, been cut down as underwood, or that they had ever paid tithe to the plaintiff or his ancestors. He said, that he believed that black poles of forty years growth were always exempt from payment of tithes, being always looked upon and used as timber trees, and not as coppice wood, and always valued by timber merchants and sellers of coppice separate from coppice wood, and generally valued from two shillings and sixpence to ten shillings a tree, in proportion to their size. He averred, that he had never heard that tithes had at any time been paid for timber of forty or sixty years growth, of which age the aforesaid trees were. He admitted, that he had felled, barked, faggotted, and disposed of the said black poles or young timber trees promiscuously, and not separately; and that he valued the same separately from the coppice wood; and that before he sold them, he separated them from the other wood after they were felled. He further said, that he had contracted with the said *J. Lee* for the coppice wood, as being only titheable, and not for the said young trees as titheable, he not looking on them to be liable to tithe, as being above twenty years growth. He admitted, that he had refused to pay the plaintiff any more than the said eleven pounds; and insisted, that if the said coppice wood had been of above twenty years growth, he ought not to have paid tithes for the same. He also admitted, that he had felled the black poles and coppice wood promiscuously, and that he had afterwards separated them, and sold the black poles for building, and the coppice wood for pit wood. He said, that the asp trees, which grew in a field adjoining to the said coppice, were not of ten shillings value; and that he could not distinguish the exact number of black poles which grew from acorns, and how many from old roots; but that it did not appear to him that any of them had grown from old stools, otherwise than being crushed at the butts, which might be done by wheels carrying wood out of the coppice when such black poles were young: for which reasons he insisted that the plaintiff was not entitled to tithes for the said eight hundred and seventy-three trees, or for any part thereof.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel for both parties; and reading the articles of agreement, signed by *J. Lee* and the defendant; and also several depositions; and on full debate; it appeared to THE COURT, that the purchase-money for the said coppice wood, old timber tree, and asp trees, amounted in the whole to the sum of two hundred pounds; that the value of the said old timber, and of the said asp trees,

according to the admission in the answer, did not exceed four pounds; and that the defendant had already paid to the plaintiff eleven pounds upon account and in part of the tithe of the said coppice wood.

AMLER  
against  
JACKSON.

THE COURT thereupon ordered the defendant to forthwith pay to the plaintiff eight pounds, twelve shillings, being the residue of the value of the tithes of the said coppice wood after the rate of two shillings in the pound of the amount of the said purchase money, deducting thereout the sum of eight shillings for the tenth part of the before-mentioned value of the old timber tree and asp trees, in full of the tithes demanded by the said bill, with the plaintiff's costs, to be taxed by the deputy remembrancer.

PARKER, *Chief Baron.*  
SMYTHE, *Baron.*  
ADAMS, *Baron.*

ABDY *against* CHITTY.

Surry, 22d June 1769.

TRIN. TERM,  
9. GRO. 3.

THE bill stated, that the plaintiff *Abdy* being seised in fee of the rectory or parsonage impropriate of *Cobham*, in the county of *Surry*, and well entitled to the tithe of wood and all other tithes yearly growing therein, by indenture, dated the first of *January* 1765, demised the same, and all tithes of corn, grain, and hay, and all other tithes yearly arising therein, to the plaintiff *Martin* for twenty-one years; and that the defendant had cut down divers quantities of alder trees on lands in his occupation, and sold the same; but had refused to pay the tithes thereof. The bill therefore prayed, that he might account with the plaintiff for the tithes of such alder trees as since *Michaelmas* 1764 had been felled from any of the lands in his possession in the parish of *Cobham*, and make the plaintiff satisfaction for the same.

Issues directed to try, whether there is a *modus* of 1s. 4d. a year in lieu of the tithes of *Six Acre Mead*, *Four Acre Mead*, *Hatchers Brook*, and *Three Acre Brook*; and another *modus* of 10d. a year in lieu of the tithes of *Dry Mead*, in the parish of *Cobham*, in *Surry*.

The defendant said, that *Abdy* was seised in fee, as stated in the bill; that he had granted the lease therein mentioned to *Martin*; that he, the defendant, had, ever since *Michaelmas* 1764, occupied divers lands in the parish; that alder trees grew thereon; that he had felled two hundred and ninety-six poles or ends of alder, which grew upon or in the fences or hedges of *Six Acre Mead* and *Dry Mead*, or *Westbrook*; that the value of them, after deducting all expences, was six pounds, one shilling; that the plaintiffs had applied to him for the payment of the tithes thereof; and that he had declined to pay the same; for that a certain ancient *modus* or composition had been immemorially paid every year by the occupiers of each of the said several parcels of ground, called the *Six Acre Mead* and *Dry Mead*, that

ABDY  
against  
CHITTY.

that is to say, the sum of one shilling and fourpence for *Six Acre Mead*, and also for certain other pieces or parcels of meadow or pasture land, called or known by the names of *Four Acre Mead*, *Hatchcraft Brook*, and *Three Acre Brook*, and tenpence for *Dry Mead* or *West Brook*, in lieu of the tithe of hay and all other tithes yearly growing, arising, and increasing upon the said parcels of ground; that the said sums or *modus* had been generally called by the name of *Mead silver*; that he had never heard that any tithe had ever been demanded for any alders growing in the fences or hedges of the said meads; that the said *modus* or compositions had, he believed, been always accepted in lieu of all tithes for the aforesaid meads; and that he had never paid any tithes, or made any satisfaction for the tithe of the said meadows, save the said sums, nor had any ever been demanded, by the former impropiators; that he had paid the same down to 1769; and he submitted to the court, whether the plaintiffs were entitled to the tithes of any alders which had grown or should grow on the said premises; and he produced his receipts for the tithes for the said years; and insisted, they were a full discharge to the plaintiff's demands.

The plaintiffs replied; the defendant rejoined; and witnesses were examined on the part of the defendant only; and upon hearing counsel on both sides; and reading several depositions in the cause; and the three following receipts; one dated the thirteenth of *April* 1765, signed by *J. Topley*, agent of the plaintiff *Abdy*, for one pound and one halfpenny, in full of all demands for *Mead silver* and other tithes therein mentioned; one other receipt, dated the eighth of *March* 1766, signed by the plaintiff *Martin*, for seventeen shillings and sixpence, in full for a year's tithe of wool and lamb and *Mead silver* for 1765; and the other receipt dated the seventh of *March* 1767, signed by *A. Martin*, daughter of the said plaintiff, for fifteen shillings and ninepence for the tithe of the year 1766; and on full debate of the matter;

THE COURT directed issues to try,

FIRST, "Whether a certain *modus* or ancient yearly payment of one shilling and fourpence had been, for time whereof the memory of man was not to the contrary, paid by the occupiers of certain pieces or parcels of ground in the parish of *Cobham*, called or known by the names of *Six Acre Mead*, *Four Acre Mead*, *Hatchcraft Brook*, and *Three Acre Brook*, to the impropiator of the rectory of the said parish, or his farmer or lessee for the time being, for and in lieu of the tithe of hay, and the tithe of all other titheable matters yearly growing, arising, and increasing upon the said pieces or parcels of ground respectively."

SECONDLY



SECONDLY, "And whether a certain *modus* or ancient yearly payment of tenpence had been, for time whereof the memory of man was not to the contrary, paid by the occupiers of a certain piece or parcel of ground in the said parish, called or known by the name of *Dry Mead* or *Westbrook*, to the said impropriator, or his farmer or lessee for the time being, for and in lieu of the tithe of hay and the tithe of all other titheable matters yearly growing, arising, and increasing upon the said piece or parcel of ground."

ARDY  
against  
CHITTY.

The plaintiffs in equity to be plaintiffs at law; and if the jury should find the aforesaid *moduses* of one shilling and fourpence and tenpence not to be in satisfaction of the whole tithes arising on the said lands, liberty is hereby given to indorse on THE POSTEA for what tithes the said *moduses* are in satisfaction of, in such manner as the judge shall think fit, &c.: further directions to be reserved until after the trial, &c.

TAYLOR against EARDLEY.

TRIN. TERM,  
9. GEO. 3.

Warwickshire, 22d June 1769.

THE bill stated, that the plaintiff was, on the twenty-first of December 1761, duly inducted into the rectory of *Berkswell*, in the county of *Warwick*, and had thereby become entitled to all tithes, both great and small, arising therein; that the defendant *Eardley* and others had been owners of divers lands in the parish, which had been formerly a PARK, but which had been long since disparked and converted into farms, consisting of arable, meadow, and pasture lands; that the defendant *Greenway* and others were occupiers of several messuages and lands, and particularly the *Park Lands*, and had yearly growing thereon, corn, grain, and hay; that they had also wool, calves, lambs, pigs, geese, and other fowls, and also honey, milk, eggs, apples, and other fruits, the tithes whereof they had refused to pay; that tithes were due of common right for the said lands; that they had never been legally discharged; and that the piece of meadow of which the plaintiff was possessed was not held in lieu of any tithes arising on the said lands, but had lately, and within memory, come into the possession of some former rector, or was part of the *glebe*; that the said park, before it was disparked, contained one thousand acres of land, and the said piece of meadow, pretended to be given in lieu of the tithes thereof, contained only one acre, two roods, and thirty perches, of small value, and therefore could never have been accepted by any rectors in lieu of the tithes thereof; that in the several terriers returned into the registry of the bishop of the diocese which were exhibited in the years 1612, 1635, 1682, 1701, and 1705, the said piece of meadow was not mentioned as then

The rector of *Berkswell*, in *Warwickshire*, is not entitled to any tithes in kind for the park lands, but enjoys a piece of meadow adjoining to the church-yard, in lieu of the tithes thereof. And *quare*, If there are not certain *moduses* in lieu of the tithes of hay, wool, lambs, milk, colts, foals, calves, and poultry.

TAYLOR  
against  
EARDLEY.

belonging to the rectory; and that it was therein presented, that the rector of the said parish was entitled to the tithe of all corn and grain without exception: and he insisted, that the then rector had not signed the said terriers; but that to the preceeding terriers the names of the then rectors were subscribed; and that therefore the terriers in 1711 and 1722 were no evidence against the rector. He further said, that if no tithes had been paid, it was owing to some collusion or agreement between the patron of the rectory, who was also owner of the park, and the rector, for that, by letters patent under THE GREAT SEAL, dated the ninth of *April*, in the third and fourth years of *Philip and Mary*, the manor and park of *Berkswell*, with the lands at *Berkswell*, with all the deer in the said park, and the advowson of the church and rectory of *Berkswell*, were granted to *J. Marrow* and *Alicia* his wife; that they had continued in the same family till 1713; that they constantly presented to the rectory; and that if no tithes had been demanded, it was for fear of disobliging the family, or by means of some temporary agreement. He also said, that *Mr. Boyce*, who was rector in 1713, and for several years afterwards, received tithe geese in kind of the said park lands; and that the defendants had severally refused to pay him the said tithes, or to discover what tithes they had, or the value thereof. The bill therefore prayed, that the defendant *Knighly* and others might account for the titheable matters withheld since the plaintiff's induction into the rectory, and be decreed to pay him the same, or the value thereof; and that his right, as rector, to the tithes in kind of the said park lands, might be established.

The defendants *Wilmot* and others admitted, that the plaintiff was rector, and entitled to all the great and small tithes thereof, so far as the same were payable in kind, and to all *modus* due in lieu thereof; that there was a large tract of land therein, which was formerly, and from time immemorial had been a PARK; that it had been many years since disparked, and divided into several farms; that the whole had ever since been called *the Park Lands*; and that the boundaries thereof were well known. They further said, that the rectors of the said parish had immemorially, and the plaintiff since his induction had held, as rector, a piece of meadow adjoining to the churchyard of *Berkswell*, lying near the parsonage-house, in lieu of the tithes of the said park lands: and they set forth the lands they were seised of in fee; and describing the same as parcels of the park lands, denied that they had any other lands in the said rectory. They also denied, that the said piece of meadow ground was ever part of *the glebe land*, or reputed so to be; or that the rector had ever any right thereto, but in lieu of the tithes of all *the Park Lands*. They said, that they believed that

TAYLOR  
against  
EARDLEY.

that the said park contained about six hundred acres, and the said piece of meadow one acre, two roods, and thirty perches; and that it was only of the yearly value of fifty shillings; but that they supposed that at the time the same was given, it was an adequate consideration for the tithes of the said park, they being of small yearly value at that time. They admitted, that *R. Boyce* had been rector of the parish in the year 1713, and that he had continued so till his death in 1758; and they said, that soon after he had become rector he made some declaration of his right to the tithes of *the Park Lands*; that to satisfy him that he had no such right, *Grace Lugg*, aged eighty-four years, daughter of *F. Foliot*, formerly rector of the parish, and then widow of *M. Lugg*, who also had been rector thereof for forty years, was examined on oath; that the said *Grace Lugg* on her oath declared, that during all her time there never had been, nor had she ever heard that any tithe, or that any venison or other thing in lieu of tithes, had ever been demanded by her father or her husband, or by any other rector, for any thing growing or arising within any of the lands called *the Park*, or that any thing had ever been paid in lieu thereof; but that she believed, and had heard, that the close of meadow adjoining to the church-yard, which her said father and husband, and other rectors within her memory, had continually enjoyed, was by them held in lieu and satisfaction of the tithes there arising; that she had frequently heard her father and her husband declare to that effect; and that she had also heard and believed, that the said close was enjoyed by other rectors, time out of mind, in full satisfaction for the tithes of *the Park*; that *Elizabeth Lea*, aged eighty-five years, servant to the said *Mr. Foliot*, rector of *Berkswell*, being examined on oath at the same time, declared to the same effect; and they referred to the said affidavits in the defendant *Knightly's* custody amongst the ancient deeds and muniments of the said estates. They denied, that *Richard Boyce*, the former rector of the parish, had ever taken any tithes in kind of *the Park Lands*, except that they had heard that he once took two geese out of *the Park Field*. They said, that they believed that the terriers in 1612, &c. were exhibited; that there was not in any of them any exception of *the Park Lands* as not subject to tithes; that the said piece of meadow was not particularly mentioned in any of them by its particular name; that they knew not that the said terriers were signed by any persons owners or occupiers of *the Park Lands*; that they believed that two other terriers were exhibited in 1711 and 1722, in both which the said *Little Meadow* was particularly mentioned as belonging to the rectory, and as having been immemorially enjoyed by the rectors; that it was believed to have been given in lieu of the tithes of *the Park Lands*; that neither of the said last-mentioned terriers were signed by the then rector; but why not, or why the exemption



TAYLOR  
against  
EARDLEY.

emption of the *Park Lands* was not entered in the first terriers, they could not set forth.

*Moduses in lieu*  
of the tithes of  
hay,

wool and lambs,

milk, colts, foals,  
calves,

and poultry.

The defendant *Wilnot* said, that in a letter which he had found among his papers the *Park Lands* were mentioned to be tithe free, there being a little meadow as a *modus* in lieu thereof; that he believed that, by letters patent dated the ninth of *April*, in the third and fourth years of *Philip and Mary*, the said manor, park, and other lands, &c. as mentioned in the bill, were granted to *Thomas Marrow* and his wife; that it remained in the family till the year 1706, when part of the said park was sold; that about the year 1713 the inheritance of the advowson was sold to *Richard Boyce*, who had notice that the *Park Lands* were tithe free, and that the said piece of meadow ground had been immemorially enjoyed by the rector in lieu thereof. He denied, that any tithes had been withheld by any collusion, &c. as stated in the bill; and insisted, that if the said lands were liable to the payment of tithes, there was in the said parish a custom time immemorial, that the owners and occupiers of all mowing ground therein yearly paid to the rector thereof, at *Easter*, the sum of twopence for every day's math of meadow ground, and one penny for every day's math of lays, or pasture ground, in lieu of the tithes of all grass growing and converted into hay in the said parish; and that it had been constantly received by the rector in lieu of tithe hay; that, by the like custom, no tithe of wool and lambs was payable to the rector, unless the sheep were kept the whole year; and if they were sold before the third day of *May*, the owners paid to the rector yearly, at *Easter*, one penny for every sheep, and one halfpenny for every lamb, in lieu of the tithes thereof; and if the said sheep and lambs were kept the whole year, then one halfpenny for every lamb under seven; and if seven or more, the tithe in kind was payable for the said lambs to the rector, he paying to the owner three halfpence for every lamb; that, by the like custom, the owners of lands paid yearly to the rector, at *Easter*, one penny for each milch cow depastured in the said parish, in lieu of tithe milk, and one penny for each colt and foal dropped within the said parish; and one halfpenny for every calf under seven, but if seven or more, then tithe in kind was payable to the rector, he paying to the owner three halfpence for each calf; that, by the like custom, the rector sent his servants annually, on the *Monday* and *Tuesday* after *Palm Sunday*, and received two eggs for every hen, two eggs for every duck, and three eggs for every cock and the drake, in lieu of the tithes for poultry and eggs.

The defendants admitted, that if the lands had been always to be cultivated, as they then were, and the tithes of corn, grain, and hay to be paid in kind, the tithe thereof would be worth sixty pounds a year; but that if converted into mowing and pasture, they

they would not be worth more than six or seven pounds a-year.

TAYLOR  
against  
EARDLEY.

The defendant *Humphries* and others, being owners and tenants, put in the like answer as to *the Park Lands, &c.* and *moduses*; and said, that they had never set out any tithes in kind for the lands so held by them.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel for all parties; and reading the depositions of several witnesses taken in this cause; as also, by consent, the depositions taken in a cause wherein *Catts, Knightly*, and others, were plaintiffs, and *E. L. Taylor* defendant; and reading several exhibits; and likewise letters patent, dated the ninth of *April*, in the third and fourth years of *Philip and Mary*, being a grant of the manor, rectory, and park of *Berkswell*; and also copies of several terriers taken from the registry of the diocese of *Litchfield and Coventry*, dated in the years 1612, 1635, 1636, 1682, 1698, 1701, and 1705; and on full debate of the matter for several days;

THE COURT, which was full, ordered, adjudged, and decreed, that the bill be dismissed, but without costs.

#### HUDDESFORD against SMITH.

TRIN. TERM,  
9 GEO. 3.

*Warwickshire, 27th June 1769.*

THE bill stated, that by letters patent, dated the thirteenth of *March*, in the twenty-seventh year of *George the Second*, the plaintiff was presented to, and on the twenty-seventh of *November 1754* instituted and inducted into the vicarage of *Nuneaton*, in the county of *Warwick*; that the townships or hamlets of *Nuneaton, Attleborough, and Stockingford*, and all the messuages, lands, closes of old or ancient inclosures, common fields, and common grounds, in the said townships, were parcel of the parish; that in *Attleborough*, at the time of making the act of parliament for inclosing and dividing the common fields in the manor of *Nuneaton and Attleborough*, and for time immemorial, there had been several ancient dwelling-houses, gardens, orchards, homesteads, crofts, and closes of land, meadow and pasture, called *Horston Fields, or Horston Inclosures*, and several other ancient inclosures, &c. as named in the bill, all which were held in severalty at all times of the year distinct and inclosed from the lands lying in the common fields and commonable places of *Attleborough and Nuneaton*, since inclosed pursuant to the said act; that by another act of parliament, passed in the sixteenth year of *George the Second*, entitled, "An Act for exchanging Part of the Glebe Lands and Hereditaments belonging to the Vicarage of *Nuneaton* for the rectorial Tithes" and

The vicar of *Nuneaton*, in *Warwickshire*, is entitled to the tithes arising in *Horton Fields*, in the township of *Attleborough*, in kind, excepting *Williams's Fields* and the *Boggy Meadow* near *Attleborough Bridge*, for the small tithes of which there is a *modus* of 12s. a-year.

HUNTERSTON  
against  
SMITH.

" and certain Lands in the Parish of *Nuneaton* belonging to the  
" Impropiator," IT WAS RECITED, that the king was patron of  
the advowson of the vicarage; that *Sir D. Ryder* was impropiator  
of the rectory of *Nuneaton*, and, as such, entitled to all great  
tithes arising therein, except such part thereof wherewith the  
vicarage was endowed: that the said *Sir D. Ryder* was seised  
in fee of certain plots of ground therein described; that the  
said plots of ground were, by virtue of the act of the fourth of  
*George the Second*, for inclosing and dividing the common fields  
and common grounds in the manor of *Nuneaton* and *Attleborough*,  
allotted to the impropiator in part satisfaction for his great tithes  
arising within the said fields; that the plaintiff's predecessor,  
vicar of *Nuneaton*, was seised, in right of his church, of parcels  
of lands in the said parish, containing one hundred and twenty-  
four acres, two perches, part of the lands allotted by the  
said other act of parliament to the then vicar, as in part  
satisfaction for his tithes and glebe lands in the said fields;  
AND ENACTED, " that all and every of the tithes of corn, grain,  
" and hay, and all other the rectorial and impropriate tithes,  
" and all other tithes, of what nature or kind soever, arising and  
" renewing within the said parish and titheable places of  
" *Nuneaton* aforesaid, belonging to the said *Sir D. Ryder*, as  
" impropiator of the rectory of *Nuneaton* aforesaid, and the said  
" plots in the said act first mentioned and particularly described,  
" should, from and after the twenty fifth day of *March* 1753,  
" be vested in and settled upon, and the same were thereby from  
" that time vested and settled upon and to the use of *R. Billio*,  
" clerk (the plaintiff's predecessor), and his successors vicars of  
" the parish-church of *Nuneaton* for ever;" that the plaintiff,  
as vicar of the said parish, was entitled, by endowment, grant,  
prescription, custom, or usage, and by the said acts of parliament,  
to all great and small tithes arising within all the messuages,  
gardens, &c. of ancient inclosure and other places within the  
said parish, except the common fields and grounds in *Nuneaton*  
and *Attleborough* inclosed and divided by the said first mentioned  
act; that the defendants *Smith* and *Hawkes* and others for  
several years had occupied, as tenants to *Henry Aston*, several  
closes of arable and pasture land of the said ancient inclosures,  
called *Horston Fields*, and also several closes and meadows of  
ancient inclosure in *Nuneaton* and *Attleborough*, as in the said bill  
is described; that they had from the said closes and lands several  
titheable matters and things, and particularly that they had fed and  
depastured thereon barren and unprofitable cattle, viz. oxen,  
cows, steers, heifers, and sheep; that they had from them milk  
and wool, calves and lambs, and had gathered therefrom oats,  
wheat, barley, beans, and other grain, or pulse, and turnips;  
that they had also fed and depastured on the said arable or pasture  
parts of the said inclosures several barren and unprofitable cattle  
as aforesaid, the tithes whereof belonged to the plaintiff in kind,

but



but for which the defendants had refused to account or to make any satisfaction. The bill therefore prayed, that they might pay to the plaintiff the value of the several titheable matters aforesaid demanded by the bill.

HUBBESFORD  
against  
SMITH.

The defendant *Smith* said, that the plaintiff was reputed to be vicar, as stated in the bill; but that he left him to the proof thereof. He further said, that he believed that the township of *Attleborough*, and the messuages, lands, &c. were in the parish of *Nuneaton*; that in *Attleborough*, before the act of 4. Geo. 2. there were several ancient dwelling-houses, &c. and ancient inclosures thereto adjoining; and that the said acts passed as stated in the bill. He admitted, that he had occupied for several years several closes of *Mr. Aston* lying in *Attleborough*, together with a dwelling-house, &c. part of *Horston Field* or *Horston Inclosures*; that the same were anciently one common field; and insisted, that a *modus* of twelve shillings a-year had been paid by the said *H. Aston* and his ancestors to the vicars or impropriators of the parish of *Nuneaton* for time immemorial for all tithes or dues whatsoever arising out of *Horston Field*. He further said, that in pursuance of the said act 4. Geo. 2. the common fields and grounds in *Nuneaton* and *Attleborough* were inclosed and measured; and that before the said act there were not, nor for time immemorial had been, distinct tithes paid for back-sides, yards, or homesteads in *Attleborough*; but that previous to the said new inclosure under the said act, the tithes of all corn and grain were anciently paid for after the rate of two pounds, two shillings, and sixpence a-year for a yard land, and after the rate of five shillings a-year for the small tithes of every yard land of the common fields and grounds in *Attleborough*, wherein the yards, back-sides, or homesteads, were considered as parcel of the said yard lands, save only the said ancient inclosure called *Horston Fields*, for which he said no tithes were due, but only such *modus* as in the said act is mentioned; that no tithe of hay or corn had ever been paid for *Horston Field* previous to the said act; and he set forth the species, quantities, and values of the tithes demanded by the bill; and added, that he had never heard that tithe milk had ever been claimed before or taken by the plaintiff's predecessors, or that any tithes of corn or grain, wool, lambs, calves, fruit, or pulse, had ever been paid for the said premises.

The defendant *Hawkes* said, that he was a stranger; that he did not live in the parish; that he was only partner with *Smith*; that the premises by them held were all in *Nuneaton* and *Attleborough*; that no part of them was in *Stockingford*; and that they had had several titheable matters and things from the said premises, for which they had not paid the plaintiff any tithes; and he insisted, that the plaintiff was not entitled

to

HUDDESFORD  
against  
SMITH.

to tithes in kind for any of the said premises, for that it appeared by the bill that certain plots or parcels of ground were, by the said acts of parliament allotted in satisfaction of the great tithes arising within the common fields and grounds; that the ancient gardens, orchards, and homesteads, were always understood to be parcel of the said common fields; that upon the inclosure and division of the said common fields, the gardens, orchards, homesteads, and backfides, were measured, as part of them, in part of the shares; and that previous to such inclosures, no tithes were due or taken for any hay arising from them, or from the said gardens, &c. occupied by them; but that the person entitled to the great tithes of the said common fields and ancient inclosures had immemorially possessed a certain close or parcel of land in the said parish, called *the Tithe Piece*, by way of *real composition* or otherwise, as a satisfaction for the said tithe hay. He also said, that from time immemorial there had been a certain monastery, nunnery, or religious house in the said parish; that to the abbots and priors of the same there was a privilege of not paying tithes for the nutriment of their cattle, or for the lands belonging to the said monastery; that the said abbots and priors for time immemorial to the dissolution of the monastery, had been in possession of the said privilege, and that they had never paid any tithes; that the said monastery was one of the greater monasteries; that it was surrendered into the hands of *Henry the Eighth* in the thirty-first year of his reign, together with all the lands and privileges whatsoever; that several pieces of the ancient inclosure so occupied by them were part of *the Demesnes* belonging to the said religious house, and freed from the payment of tithes for agistment of cattle, or in respect of such lands; that the said religious house stood in the said ancient close, called *the Manor Court*; that the same had been in the defendant's occupation since *Lady Day 1766*, together with divers other ancient inclosures lying in *Nuneaton*, near to *the Manor Court*, and which the defendants believed were other parcel of *the Demesne Lands* belonging to the said monastery; and he averred, that no tithe of hay or corn had ever been taken in kind, or any composition made for great part of the said ancient inclosures in their occupation; but that they were willing to pay the plaintiff what he was justly entitled to.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel for the plaintiff, and no one appearing for the defendants; and reading an order, whereby they undertook to appear *gratis*; and the defendant's answer; and the proofs of this cause on behalf of the plaintiff;

THE COURT, which was full, ordered the deputy remembrancer to take an account of what was due to the plaintiff  
from

from the defendants respectively for the several titheable matters and things demanded by the bill arising from the premises in *Attleborough* and *Nuneaton*, in the occupation of the defendants respectively, except the vicarial or small tithes of the closes and meadows in the bill mentioned to have been in the occupation of *Anne Williams*, widow, and *John Liptrott*, clerk, called or known by the names of *Williams's Horston Field*, *Williams's Lesser Horston Field*, *Williams's Horston Field Meadow*, and the *Boggy Meadow*, near *Attleborough Bridge*, and containing about twenty acres, in the occupation of the defendants *Smith* and *Hawkes*, parcel of seventy acres in *Horston Fields*, in *Attleborough*, formerly held by *Richard Wise* and *Joseph Whitmore*, or one of them, the plaintiff being willing to accept a *modus* of twelve shillings a-year in lieu and satisfaction of the vicarial or small tithes of the said lands formerly held by the said *Richard Wise* and *Joseph Whitmore*, unless cause should be shewn to the contrary.

EXHIBITED  
against  
SMITH.

The defendants having paid the costs, the cause came on again; and on hearing counsel on both sides; and reading an order of the fourteenth of *June* last to prove exhibits; an examined copy of an act of parliament made in the fourth year of *George the Second*, entitled, "An Act for inclosing and dividing the Common Fields and Common Grounds in the Manor of *Nuneaton* and *Attleborough*, in the county of *Warwick*;" an examined copy of another act of parliament, made in the sixteenth year of *George the Second*, entitled, "An Act for exchanging Part of the Glebe Lands and Hereditaments belonging to the vicarage of *Nuneaton* for the Rectorial Tithes and certain Lands in the said parish belonging to the impro-prior;" an examined copy of an inrollment of the award of *Thomas Byrd* and others, commissioners named in the said act, for the inclosing and dividing the common fields and common grounds in the manor of *Nuneaton* and *Attleborough*, which award bears date the twenty-second of *August* 1733; and upon reading the depositions; and further proofs in the cause; and the said decree, dated the twenty-seventh of *June* last;

THE COURT ordered the decree of the twenty-seventh day of *June* last to be made absolute as to the account thereby decreed; and that the defendants do pay to the plaintiff his costs of this suit, to be taxed: subsequent costs and further directions to be reserved till after the report.

ERSKINE



MICH. TERM,  
10. GEO. 3.

ERSKINE *against* RUFFLE.

*Essex*, 16th November 1769.

The rector of *Wickham St. Paul*, in *Essex*, claims the tithes in kind, and insists that the tithes of corn are to be set out in treaves and not in sheaves, and that the whole of every field is to be cut down before any tithes are set out, and the whole tithes thereof set out before any part of the crop is carried away.  
S.C. 6. Bac. Abr. 738.  
S.C. Rayn. 568.

THE bill stated, that the plaintiff was collated, instituted, and inducted into the parish church of *Wickham Saint Paul*, in the county of *Essex*, and, by virtue thereof, had become entitled to receive the tithes of corn, grain, hay, wool, lambs, and other tithes, as well great as small, arising therein; that the defendants, for some time past, had occupied several farms and lands therein, and had arising and growing thereon corn, grain, hay, and other titheable matters, the tithes of which they had refused to pay; that the defendant *Ruffle* had compounded with him for his tithes for three years, ending at *Michaelmas* 1765; that he had since pretended to set forth the tithes of milk, eggs, wood, pigeons, &c. but had set forth the same illegally; that the defendants had kept cows and sheep, which had calves, milk, lambs, and wool; that they had also sows, which had pigs; that they kept poultry, which had produced young ones and eggs; that they had topt and lopt several pollards and other trees, and had made a number of faggots, brush-wood, and other wood thereout, which they had burnt and disposed of; that they had cut various fields of corn at various times, and set out the tithe corn in sheaves and not in treaves, as they ought to have done; and that they had substracted the tithes of all the said matters and things, and had refused to make him any satisfaction for the same. The bill therefore prayed, that the defendants might account for all and every the said tithes, and pay the true and just value thereof; and that the plaintiff's right to the same might be established.

The defendants admit, that the plaintiff is entitled to the tithes.

The defendants said, that the plaintiff was inducted into the said rectory about *May* 1762, and was entitled to the tithes of all corn, grain, hay, wool, lambs, and all the tithes, great and small, tenth offerings, and other dues and duties arising therein.

The defendant *Ruffle*, says he occupied *Wickham Hall*, and *Rowls Crofts*, that he had paid his tithes to *Michaelmas* 1765;

that he had duly set out his subsequent tithes of corn and grain;

The defendant *Ruffle* said, that he had ever since *February* 1763, occupied *Wickham Hall Farm*, and *Rowls Crofts Farm*, and had several titheable matters thereon, the tithes whereof in kind the plaintiff would have been entitled to, but that he compounded with him at eighty one pounds, ten shillings *per annum*, for all his tithes, great and small; that he had paid the same to *Michaelmas* 1765; and that therefore the plaintiff was not entitled to a discovery of tithes during that time; that from *Michaelmas* 1765 to *Michaelmas* 1766, he had reaped, cut, and mowed corn, grain, and hay from off the said lands, but that, as he had duly set out the tithes thereof for the plaintiff to take away, if he had been so minded, he had not kept any account thereof; that he had

had, during the said time, kept and depastured on his said lands twenty cows, from which he had seventeen calves; that the plaintiff had two of them for the tithes, which were more than he was entitled to; and that a full and fair tenth of the milk during that year was duly set out for tithes, and which the plaintiff took away; that he also kept and depastured thereon seven score of wether sheep and ewes, and two rams; that he had from the said ewes eighty-four lambs; that he rendered eight of the said lambs for tithes, which the plaintiff fetched away; and that he had paid two shillings and sixpence as a satisfaction for the tithe of the remaining four lambs, which was more than the tenth of their value; that he did not set out his tithe wool in kind, as they had agreed that it should be sold, and that the plaintiff should receive the tenth part of the money, and which he had accordingly received; that he had also kept some sows, which had two farrows; that the plaintiff had a pig of each farrow for the tithe; that he also had a pigeon-house from which he had several dozens of pigeons, but that as they were generally eaten and spent in his family, he did not pay to the plaintiff the tithes thereof; that he had poultry, fruit, garden stuff, and wood, for which he paid the plaintiff the full tenth part; that he had cropped many pollards and bolling trees, but that he did not set out the tithes thereof because they were consumed in his house as fuel; and he denied, that he had concealed any tithes from the plaintiff. He also denied, that he had ever pretended, that the plaintiff must take away his tithes from time to time, as he had set them out, or that he might set out the tithes of any single field as often, and at as many times, and in as small quantities as he thought proper, or that he need not cut the whole field before such separate parcels of tithe were set out; but he admitted, that he had declared, that he was not obliged by law to cut down the whole of a field of corn before he proceeded to tithe and carry away any part thereof. The defendant further stated, that it was not usual or customary for the farmers in the said parish and neighbourhood to wait till the whole field of corn was cut down before they began to tithe and carry away any part of it, (unless the fields were very small and the weather very fine) for that it had always been customary for them to begin to cut and get in their corn as was convenient for them and the weather permitted, and to set out the tithe of what they cut, without waiting till the whole field was cut down; and he insisted, that the plaintiff ought to comply therewith, for that if the farmers were obliged to wait till the whole field was cut down, the corn in general must necessarily lie many days exposed (after being fit to be carried), and so remain liable to all the hazard and uncertainty of the weather, whereby it would be in danger of being spoiled or greatly damaged, especially in a wet and unsettled season; that in inclosed lands if the wheat get wet after being cut and bound

VOL. III.

R

in

ERSKINE  
against  
RUFFLE.

that he had paid  
his tithes of  
calves and milk,  
of ewes and  
lambs;

of wool;

of pigs,

of garden-stuff  
and poultry;  
but not of pi-  
geons;

or of wood  
burnt in the  
house;

and contends;  
that he was not  
obliged to cut  
down the whole  
produce of every  
field before he  
set out the tithes  
thereof;

states the inju-  
ries that might  
ensue from such  
unusual practice.

ERSKINE  
against  
RUFFLE.

says, that he set  
out the tenth  
sheaf as he cut  
it ;

that he set out  
the tithes of bar-  
ley, pease, and  
oats in swarths.

The defendant  
*Brewster* puts in  
the like answer.

The cause  
heard.

The custom of  
one parish not e-  
vidence of that  
in another.

in the sheaf, the sheaves must be opened in order to be dried, which takes up a considerable time, in regard the wind has not the same power of drying there, as in open countries ; that when the wheat is once wet after being fit to be carried, if it do not quickly get dry again, the kernels are apt to grow and shoot out, and the corn then becomes bad and unfit for sale ; and that the damage the corn would and must often sustain by lying in the field in a rainy season, would not only greatly affect the farmers interest, but in its consequence and extent become of publick concern, by being prejudicial to the welfare of the community. The defendant further stated, that the plaintiff in the beginning of *August* 1766, (but not before he, the defendant, had cut some corn) told him that he would not accept any corn for tithe until after the whole field was cut down before any tithe was set out, and the whole tithe set out before any part of the corn was carried off; that he had told the plaintiff that the said method was new, unprecedented, and impracticable ; and that, if he complied with it and the season should prove wet, he must unavoidably lose the whole or the greater part of his crop of corn ; and that the plaintiff ought therefore in justice to continue to take his tithes in the same manner as his predecessors had always done. He set forth the quantity of corn which he had cut, and said that he had set out the tenth sheaf at the different times he had cut the same ; that it was not customary and usual for the farmers in that neighbourhood to set up tithe wheat in treaves when they set up their own ; and he spoke as to his barley, pease, and oats, the tithes of which he said he had set out in swarths, and not in cocks or shocks, for that cocking or shocking of soft corn was never practised by the farmers within the said parish and the country about it ; and that he therefore conceived, that the fairest and most unexceptionable way of tithing soft corn was by setting out every tenth swarth.

The defendant *Brewster* said, that he had, since the plaintiff became rector of the parish, occupied lands therein, which were his own property ; that he had to *Michaelmas* 1765, duly rendered and set out the tithes of all his corn, grain, and hay which he had reaped, cut, or mowed from off the said premises ; that the said tithes had been taken and accepted by the plaintiff without any objection ; and that for the year 1766 he had set out his titheable matters ; and he spoke to the same effect as the defendant *Ruffle* had done as to the manner of setting out the tithes thereof.

The plaintiff replied ; the defendant rejoined ; and witnesses were examined on both sides ; and upon hearing counsel several days ; and reading the proofs in the cause ;

The plaintiff's counsel objected to the reading any evidence taken in this cause relating to the custom of tithing in other parishes, and THE COURT allowed the objection.

And



And the cause now standing for the opinion of the Barons,

THE COURT, which was full, ordered the bill to be dismissed, but without costs, as to the demand against *Ruffle*, for the tithe of wheat in *Wiggons Leys*, *Rowls Croft*, and *Twillage*; and also as to the demand of the tithe of calves, hay, wool, lambs, pigs, eggs, poultry, apples, milk, wood, and pigeons.

But THE COURT ordered him to account for the tithe of the wheat in *Lambor Field*, *Sandpit Field*, and *Holder's Mead*, according to the value of such tithes; AND LIKEWISE for the tithes of the barley, oats, and pease which he had on all the lands by him occupied in the said parish, according to the values thereof, without costs.

THE COURT also ordered the bill, as against *Brewster*, to be dismissed without costs, as to the demand of the tithes of milk, wool, lambs, pigs, poultry, apples, pease, and garden stuff, and the said defendant to account for the tithes of wood and oats in *Honey Croft* (not accepted by the plaintiff); and also for the agistment of dry and unprofitable cattle on the lands occupied by him in the said parish during the time demanded by the bill, according to the value of such titheable matters. The deputy remembrancer to take the account, &c. &c.

EASKINE  
against  
RUFFLE.

The bill dismissed, as to the tithe of wheat in certain fields, and as to small tithes.

The tithes of wheat in other fields decreed; the tithes of barley, oats, and pease decreed.

The bill against *Brewster* dismissed as to small tithes; the tithes of wood, oats, and agistment decreed.

### BEWICK against NICHOLLS.

*Yorkshire*, 23d November 1769.

MICH. TERM,  
10. GEO. 3.

THE vicar of *Colverley*, in the county of *York*, demanded, by his bill, an account and payment of small tithes and *Easter* offerings for five years last past, particularly the tithes of potatoes, turnips, turnip-seed, rape-seed, lambs, wool, sows, sheep, and twopence and twopence halfpenny yearly for each dwelling house at *Easter*, for *Easter* offerings, arising on the defendant's farm in the manor of *Tyersal* in the said parish.

The defendant said, that the manor of *Tyersal* was exempt from the payment of every kind of tithes to the vicar of *Colverley*; for that all such tithes were formerly due to the owners of the rectory; and that the rector, when duly seised thereof, by deed granted to *J. Thornton* all the tithes of corn, grain, and hay, and all other tithes whatsoever arising on the messuages, lands, and tenements within the manor of *Tyersal*, in the territories of the rectory of *Colverley*, at the yearly rent of ten shillings, payable to the owners of such rectory; that the said *J. Thornton* was, and that *R. Thornton* is seised of the whole township of *Tyersal*; that the land he occupied lay within the said manor; and that he occupied the same as tenant to *Thornton*. The defendant further stated, that he had paid the plaintiff his dues till *Easter* 1763 inclusive; that, from that time to the exhibiting the

The vicar of *Colverley*, in *Yorkshire*, is entitled to the tithes of potatoes, turnips, turnip-seed, rape-seed, lambs, wool, and other small tithes arising on the lands in the manor of *Tyersal*, in the said parish.

Bewick  
against  
Nicholls.

bill, he had annually attended him to account for and pay the dues, particularly at *Easter* 1764, when he first demanded tithes of turnips and potatoes; that upon his refusing to pay the said tithes, the plaintiff refused to accept of his dues so tendered to him; that he never made any demand before for the tithes of wool and lambs; and he denied, that any tithes were due, or that any had ever been paid for lands within the said manor.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and the cause came on to be heard on the twenty-third day of *February* last, when it was ordered by the Court, that the cause should stand over on payment of the costs of the day, with liberty to the plaintiff to amend his bill, by making *Richard Thornton*, who was then abroad beyond sea, a party thereto. The cause came on to be further heard on the sixteenth of *November* 1769; and upon hearing counsel for all parties for several days; and reading an order made herein on the twenty-third day of *February* last, that a copy of the original endowment of the vicarage of the parish of *Colverley*, in the time of the *Archbishop Sewell*, should be read as evidence on the behalf of the plaintiff; the said copy of such original endowment; the depositions of several witnesses; the following terriers, dated respectively the twenty-sixth of *September* 1716, the tenth of *August* 1727, and the thirteenth of *September* 1743; an inrollment from the office of the lord treasurer's remembrancer of a grant from *James the First*, dated the fourth of *August*, in the fourth year of his reign, to *William Vernon* and *C. Nailer*, of the rectory of *Colverley*; an indenture dated the twenty-third of *February* in the twenty-first year of *Charles the Second*, signed *R. Walter* and others, being a grant from them to *J. Thornton*, in fee of tithes in the township of *Tyersal*; several receipts, dated from the thirtieth of *October* 1689, to the twenty-second of *May* 1711, signed *H. Saville* and *J. Steed*; and upon offering a decree of this court, dated the second of *July*, in the third year of *William and Mary*, in the cause of *Ubaldo v. Colverley*, as evidence for the plaintiff, and the same being objected to by the defendant's counsel and refused by the court; and on debate of the matter;

THE COURT, which was full, ordered the defendant to account with the plaintiff for all the titheable matters and things demanded by the bill, with costs of suit to this time.

The deputy remembrancer made his report, dated the fourteenth of *July* 1770, and upon reading the said decree and report, without exceptions, and hearing the plaintiff's counsel that the report might be confirmed; the report was on the same day ratified and confirmed, and the defendant ordered to pay three pounds, twelve shillings, and sixpence, for tithes, and

seventy-nine pounds, nine shillings for costs taxed, together with subsequent costs.

BIEWICK  
against  
NICHOLLS.

PARKER, *Chief Baron*,  
ADAMS, *Baron*,  
PERROTT, *Baron*.

HEATHFIELD against TROSSE.

MICH. TERM,  
10. GEO. 3.

Devonshire, 11th December 1769.

THE bill stated, that the plaintiff was lessee of all tithes arising within the rectory of *Woodbury*, in the county of *Devon*; that the custos and vicars choral of the choir of the cathedral church of *Saint Peter* in *Exeter*, were the impropiators of the rectory, and as such were entitled to all tithes arising in the said parish; that by lease, dated the fifth of *July* 1764, they demised to the plaintiff all their tithes of corn, grain, hay, and flax, or of any other kind whatsoever therein, and all other emoluments belonging to the same, to hold for twenty-one years; that there were within the said parish the following ancient customs; that every occupier of land within the said parish should pay to such custos and college, or to their lessee, fourpence a-year for every acre of meadow mowed, and threepence a-year for every acre of clover and land-grass; fourpence a-year for every milch cow and her calf depastured in the parish; threepence for every heifer and calf; one penny for every colt that fell within the parish; threepence for every hogthead of cyder; and one penny for hoard fruit; that the said *modus*es were payable at *Easter*; that the tithes of agistment for feeding all sorts of cattle, excepting labouring cattle and milch cows, were to be assessed in proportion to the number of cattle, and the profit arising from feeding of them; that the said *modus* was also payable at *Easter*; that every tenth fleece of wool sheared in the parish was payable to the plaintiff at *Midsummer* yearly; that every tenth lamb yeaned in the parish was due to the plaintiff on *Saint Mark's Day*: that the defendant had, for one year, occupied *Branscombe's Tenement* and *Rotterdam's Tenement*, together with the lands thereunto belonging, and other lands and grounds within the parish; that he had cut and taken from off the said lands meadow grass, clover grass, land grass, apples, and cyder; that he had kept several milch cows, from which he had calves; that he also had fed during the same time divers horses, mares, colts, oxen, barren kine, heifers, steers, yearlings, and other unprofitable cattle in the said parish, the pasture of which was worth at least three pounds a-month; that he had also fed several sheep, from which he had shorn wool that was worth three shillings and sixpence a fleece; that the said sheep had also yeaned several lambs, which,

The custos and vicars choral of *St. Peter*, in *Exeter*, are entitled to certain *modus*es in lieu of the tithes arising in the parish of *Woodbury*, in the county of *Devon*.



HEATHFIELD  
against  
TROUSE.

one with another, were worth twelve shillings a lamb; that he had killed a number of his sheep after they were fatted, and had killed or conveyed others out of the parish before they had yeaned or been shorn, the pasture of which was worth three pounds a-month; that he had also from lambs which he had fed, several fleeces of wool that were worth, one with another, two shillings and sixpence a fleece; that he also had colts foaled, for each of which there was, according to custom, one penny payable to the plaintiff at *Easter*; that he had also during the said time several other titheable matters (a), the small tithes of all which he had refused to pay; as well as for *Easter offerings*.

The defendant admitted, that the custos and college of vicars choral were the impropiators of the parish; that they were, as such, entitled to all tithes therein; and that they had demised them to the plaintiff as stated in the bill. He also admitted, that the customs as to the tithes of meadow mowed, clover grass, land grass, milch cow and calf, heifer and calf, young colts, hogsheds of cyder, and hoard fruit had immemorably prevailed in the said parish in the several modes stated in the bill; but he denied, that there was any custom, that every occupier of land should pay tithes of agistment for feeding and depasturing cattle, excepting labouring cattle and milch cows, in proportion to the number of cattle and profit arising from the feeding of them, or that such tithes of agistment were payable at all; but he insisted, that the custom was, that every occupier of lands within the parish should pay to the custos or college, or to their lessee for the time being, two shillings for feeding every poor or lean bullock therein till it was fat and fit to be slaughtered, and so in proportion for so much of the time required for fattening and making a poor or lean bullock fit for slaughter. He also admitted, that every tenth fleece of wool shorn in the parish was due to the plaintiff at *Midsummer* yearly, and also that every tenth lamb yeaped therein was due to the plaintiff, but not on *Saint Mark's Day*;

(a) One *Trewin*, who had been lessee of the tithes of *Woodbury*, under the custos and vicars choral of *Saint Peter*, filed his bill in the court of exchequer in *Hilary Term*, 18. Will. 3. against one *Cunnet*, and claimed the tithes of four acres of coppice-wood, felled in the year 1698 and 1699. from a wood called *Halfwood*, and of another four acres felled from a wood called *Rusmore Coppice*, in the parish of *Woodbury*. The defendant admitted, that he had bought three acres of wood in *Woodbury Wood*; three acres in *Halfwood*; and three acres in *Rusmore Wood*; that he had cut the said woods down and disposed thereof, without setting out any tithes for the same; for that the trees he had so felled and

sold were all of them oaks above thirty years growth. THE COURT, on reading the depositions, ordered the defendant to account for the value of the tithes of such wood as he had cut down in *Halfwood* and *Rusmore Wood*; that he might take out a commission to examine witnesses for the purpose of distinguishing what part and how much of the said wood was timber; and that he should not be charged with tithes for such timber trees. On the eighth of *November* 1701, the deputy made his report and on the twenty-fourth of the same month, the report was confirmed, and the defendant ordered to pay five pounds for the tithes of the said wood, with costs.

and

and he insisted, that the tithe lamb was due and ought to be taken by the plaintiff, as soon as it was weaned and fit to live without its dam, by its being able to feed on grass. He further said, that he had held for the said year the tenements and lands mentioned in the bill, and also *Gibb's Tenement*, and other tenements in the parish, but no other lands whatsoever. He also said, that there was due to the plaintiff at *Easter* twopence a-piece for each communicant in lieu of their general oblations,

HEATHFIELD  
against  
TROSSE.

The plaintiff replied, the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides, and on reading several of the proofs taken in the cause;

THE COURT disallowed the *modus* of two shillings for feeding of bullocks, as laid in the answer; and ordered, adjudged, and decreed, the deputy remembrancer to take an account of what was due to the plaintiff for agistment of the cattle, as mentioned in the bill, and also an account of the several *moduses* in the bill mentioned and admitted by the defendant; and also an account of the several other titheable matters and things, and for the *Easter offerings* demanded by the bill; the defendant to pay the plaintiff the costs of this suit to this time to be taxed.

PARKER, *Chief Baron*,  
SMYTHE, *Baron*,  
PERROTT, *Baron*.

## HEATHFIELD against TROSSE.

Devonshire, 13th December 1769.

MICH. TERM,  
10. GEO. 3.

THE plaintiff, who was lessee of the tithes arising in the rectory of *Woodbury*, in the county of *Devon*, under the custos and college of the vicars choral of the choir of the cathedral church of *Saint Peter*, in *Exeter*, stated, that there was within the said parish of *Woodbury*, a certain immemorial custom, that every occupier of lands therein, having a crop of wheat grown upon any lands in the said parish, shall, after such crop hath been cut down, make up and bind such wheat into sheaves, and afterwards gather and set up such sheaves in heaps, called *shocks*, each shock consisting of ten sheaves (a); AND ALSO that after such shocks have been made, and before the tithes of such corn hath been set out, he shall give notice to the proctor of the parish, that such corn is set up into shocks, and require him to attend at a certain time, named by the occupier, to see the tithes of such corn set out; AND ALSO that, for that purpose, the proctor, or his agent, shall have the liberty to ride on horseback into the fields where such wheat grew and is to be tithed, to see the tithe thereof duly set out. The bill then stated another custom, that every occupier of lands within the said parish, having a crop of barley or oats, and oats are under the like circumstances, to be bound up into sheaves; and out in dozers;

The lessee of the great tithes of *Woodbury* in *Devonshire* states, that by the custom of the parish the farmer is to bind up his wheat into sheaves, and, after notice thereof to the proctor, to set out such sheaves into shocks of ten sheaves each; and to permit the proctor to ride on horseback through the field to see that the tithes are fairly set out; and that barley the sheaves be

(a) See *Trewen v. Bond*, vol. 1. page 393.

**HEATHFIELD**  
against  
**TROSE.**

grown upon any lands therein, shall, after such crop hath been cut down, make up and bind such barley and oats into sheaves, and afterwards gather and set up such sheaves in heaps, called *dozens*, each dozen consisting of twelve sheaves; AND ALSO after such dozens are made, and before the tithes of such crop are set out, shall give notice to the proctor of the parish that such crop is set out in dozens, and require the said proctor to attend at a certain time, named by the said occupier, to see the tithe of such crop set out; AND THAT, for that purpose, the proctor shall have liberty to ride on horseback into the fields where such barley or oats grew and are to be tithed, to see the tithes thereof duly set out. The bill then proceeded to state, that the defendant, from the twenty-ninth of *September* 1766, had occupied divers lands in the parish, and had in the year 1767, wheat growing on a part thereof, called *Hollowhill Field*; that he had cut down the same and bound it up in sheaves, and set the sheaves up in shocks; that he also had barley which he had cut down and bound into sheaves, and gathered into dozens; but that he had so set out the tithes of the said wheat, without giving the plaintiff due notice of the same; and that he, the plaintiff, had never had any tithe of the said field in 1767, or any satisfaction for the same; that the defendant, intending to litigate the custom of giving notice before tithing, tithed in several other closes of corn and grain, during the harvest of the year 1767, without giving the plaintiff any previous notice of his intention to tithe the same; that he, the plaintiff, to prevent multiplicity of suits, carried away the said tithes, intending to prefer his bill, and thereby to establish the said custom; that the said custom of giving notice had been proved and established in an action brought in the court of king's bench, wherein *B. Bulter*, an occupier of lands in the parish, was plaintiff, and he the present lessee of the tithes defendant. The bill then stated, that the defendant threatened to sue the plaintiff at law for leaving the tithes in *Hollowhill Field*, and for riding into *Rotterdam Field*; AND PRAYED, that an account of the tithes of the said wheat in *Hollowhill Field* in 1767 might be taken; that the defendant might pay what should appear due; that the before mentioned customs of tithing might be established; and that the defendant might be restrained from all proceedings at law against the plaintiff touching the several matters aforesaid.

that the defendant cut down wheat in *Hollowhill Field*, and also barley, and set out the tithes without any previous notice to the proctor;

that he, the plaintiff, received the tithes of the barley but not of the wheat; that the said custom had been established at law;

and he prays it may be established in equity, and the defendant decreed to pay the value of the tithe wheat.

The defendant admits the custom, except as to the necessity of giving notice to the proctor before the tithes are set out;

The defendant admitted the right of the custos and college of vicars choral to all tithes in the parish, and the demise thereof to the plaintiff. He also admitted, the custom of binding wheat into sheaves, and afterwards gathering such sheaves in heaps called shocks, each shock consisting of ten sheaves; but he denied, that he had ever heard, except by the bill, that after such shocks were made, and before the tithe of the said corn was set out, the occupier was to give notice to the proctor



of the tithes of the said parish, that such corn was set up into shocks, and require the said proctor to attend at a certain time to be named by the said occupier to see the tithes of such crop set out; and that for that purpose the proctor or his agent had the liberty of riding on horseback into the fields where such wheat grew, and was to be tithed, to see the tithe thereof duly set out; and on the contrary insisted, that, from time immemorial, it had been customary for any occupier of land within the said parish to have the tithes of such corn, after the sheaves thereof had been gathered and set up in heaps called *shocks*, set out by two indifferent persons, and then, and not before, to give the proctor notice to attend at a certain time, named by such occupier, and see that such tithe was duly set out; and that the proctor of the said parish, or his agent, never was accustomed to ride on horseback into the said fields, as in the bill is alleged. He further said, that he believed the custom for setting out the tithes of barley or oats to be as in the bill was mentioned, except only as to the notice as aforesaid. He admitted, that he had occupied divers lands within the parish in the year 1767; and that he had thereon in the said fields such wheat and barley; and said, that the said wheat and barley had been cut down and bound up in sheaves; that the sheaves had been set up in shocks and dozens; that the wheat was tithed by two indifferent persons, and boughs placed on the shocks to denote the tithe thereof, before notice was given to the plaintiff; and that the plaintiff had never taken the said tithes away, or received any satisfaction for the same; but that he might have received such tithe fairly and justly set out, if he had chosen so to do. He also admitted, that in the harvest of the year 1767, he had caused to be tithed the several quantities of wheat, barley, and beans, mentioned in the bill, by two indifferent persons, without giving the plaintiff any previous notice of his intention of tithing the same; and that the plaintiff had taken the said tithes away, and seemed perfectly satisfied therewith. He denied, that the custom of giving notice had, to his knowledge, been proved and established in an action, or that he had ever threatened to proceed at law. He said, that he was unable to set forth the quantity of wheat he had growing in *Hollowhill Field*, and he submitted, that as after the tithe thereof was set out, and before any corn was carried away, he had sent notice to the plaintiff, he ought not to account with the plaintiff for the tithe of the said wheat or to pay him the value thereof.

HEATHFIELD  
against  
TROSSER.

and insists that the custom is not to give notice until the sheaves have been set up into shocks by two indifferent persons.

that he set out his tithes both of the wheat and of the barley, oats, and beans, accordingly;

denies that the custom of giving previous notice had been established;

and says, that he ought not to account or pay for the wheat.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides, and reading the several proofs taken in the cause;

The cause  
head.

THE COURT directed an issue to try, "Whether a certain custom now subsists, and from time whereof the memory of man is not to the contrary, hath been used and approved, viz. that

An issue directed to try the custom.

HEATHFIELD  
against  
TADLER.

" that every occupier of lands within the parish of *Woodbury*,  
" having a crop of wheat grown upon any lands within the  
" said parish, after such crop hath been cut down, hath from  
" time immemorial made up and bound such wheat into sheaves,  
" and afterwards gathered and set up such sheaves in heaps,  
" called *shocks*, each shock consisting of ten sheaves, and after  
" such shocks had been made, and before tithes of such corn  
" had been set out, hath given notice to the proctor of the said  
" parish, that such corn is set up into shocks, and required him  
" to attend, at a certain time, named by the occupier to see the  
" tithes of such corn set out."

The cause to be further heard on the *postea*.

MICH. TERM.  
10. GEO. 3.

WOOD against HARRISON.

*Yorkshire*, 13th December 1769.

The rector of *Hemsworth*, in *Yorkshire*, claims the tithes of the second crop of clover hay; of turnips fed off by sheep which had paid tithes; and of the depasturing of lambs fattened for sale.

S. C. Ambler,  
563.

THE bill stated, that about the twelfth of *February* 1763, the plaintiff was presented, instituted, and inducted, into the rectory, parsonage, and parish church of *Hemsworth*, with its rights and appurtenances, in the county of *York*, and had ever since been and then was the lawful rector and incumbent thereof, and as such entitled to all tithes, great and small, and other ecclesiastical dues arising therein, and in the titheable places thereof; that the defendants, during the year 1763, occupied divers lands and tenements in the parish, and had grown thereon clover; that the said clover had been, during that year, twice mowed, severed, and made into hay; that they also had agisted and depastured barren and unprofitable cattle; that they had also had large quantities of turnips; that the tithes of the said several matters had become due to the plaintiff, and ought to have been paid him in kind, or some satisfaction made to him for the same; but that they had refused either to set out or pay any tithes, except the tithe of the first crop of clover, or to give him any account of the nature, quantities, or values of such titheable matters and things. The bill also charged, that clover had not been sown and grown immemorially in the parish; and prayed that the defendants might account for and pay the said tithes.

The defendants admit the plaintiff's title to tithes.

The defendant *Harrison* says, that all his turnips were eaten on the ground by sheep for which tithe had been paid.

The defendants admitted, that the plaintiff was rector, and entitled to the great and small tithes, and other ecclesiastical dues of the parish.

The defendant *Harrison* said, that, in the year 1763, he occupied three acres of land in the parish, which he had sowed with turnips; that the value thereof was seven shillings and sixpence an acre, the same being remarkably bad that year; that his sheep had fed upon and eaten all the said turnips on the ground; that the plaintiff

plaintiff had before received the tithes for such sheep; that he did not sell any part of the said turnips, neither was any part thereof drawn or pulled up. He also said, that he had occupied, during the year 1763, five acres more, which he sowed with clover seed; that he had cut and made the first crop thereof into hay; that he had duly set out the tithes thereof in great cocks; and that the plaintiff had received and taken the same away; that afterwards, and during the said year, he had cut the said clover a second time, and made the same into hay; that the said second crop was not worth more than one shilling and sixpence an acre; that he did not render or set out the tithes thereof, nor make the plaintiff any satisfaction for the same, as he apprehended that no tithes were due to the plaintiff for the same. He also said, that he did not feed or depasture within the said parish or the liberties thereof, in the said year, any barren or unprofitable cattle, except cattle bred, kept, or used for the plough or pail; and he insisted that no tithe was due or payable for the same.

Wood  
against  
HARRISON.

that he made the tithes of the first crop of clover into hay in lieu of the tithes of the second crop;

that he fed no cattle except what were bred for plough or pail.

The defendant *Wilson* put in the like answer as to clover, and said, that he had no turnips in the year 1763; that he kept some ewes from which he had lambs, the tithes of which he tendered to plaintiff, according to the custom of the parish, but that the plaintiff refused to accept of the same; that he had not, in the said year, depastured in the parish, or the liberties thereof, any barren or unprofitable cattle, save what were bred or kept and used for the plough and pail; and that no tithes were due for depasturing such cattle.

The defendant *Wilson* answered in like manner as to turnips, clover, and barren cattle.

Both the defendants insisted, that no tithes of any second crop of clover in the same year in the same parish had ever been rendered or paid after the tithes of the first crop thereof had in the same year been made into hay, and paid to the rector or his farmer, or satisfaction made to him in lieu of the tithes of such first crop; that no tithes of such second crop had ever been claimed or demanded until lately by the plaintiff; that the occupiers of lands within the said parish, making at their own expence the tithes of the first crop of clover into hay in great cocks for the rector, had for time immemorial been accepted, deemed, and taken, as and for a satisfaction of tithes of the second crop, and had been accepted as such by the former rectors of the parish. They further insisted, that the tithes of lambs were not due or payable in the said parish in kind, for that, by an immemorial custom therein used and approved, the owners of lambs, from time to time lambed or fallen in the parish, or the limits thereof, had, from time to time, immemorially paid and used, and of right ought to pay to the rector of the parish, or his farmer or tithe gatherer there for the time being, a *modus* or customary payment in money of four shillings, and no more, for

Both defendants aver, that no tithes of second crop had ever been demanded;

and state a custom in the parish to make the first crop into hay at the owner's expence, in lieu of the tithes of the second crop; and another custom or *modus* to pay 4s. for every ten fat lambs; 2s. for every five; 4d. for every lamb under five; and 3d. a-piece for every other lamb.



Wood  
against  
HARRISON.

for every ten lambs impastured or fattened; two shillings and no more for every five such lambs; fourpence a piece for all such under five; and for all such above five, and under ten, fourpence a-piece, and no more, yearly, at the time when the rector's tithe gatherer or farmer thereof collected the tithe wool, in lieu of the tithes of such lambs; and for all other lambs bred within the said parish threepence, and no more, yearly, payable as aforesaid, for and in lieu and in satisfaction of the tithes of and for all such other lambs; that such *modus*es had, from time to time, during all the time aforesaid, been accepted and taken in lieu and satisfaction of such tithes by the rector of the parish, or his farmer or tithe gatherer, till lately that the same had been objected to by the plaintiff, and refused to be accepted of.

Another *modus*  
of 1d. at Lady  
Day for every  
sheep wintered  
and fed in the  
parish, and sold  
before shearing  
day.

They further insisted, that by the immemorial custom of the said parish, the owners of sheep from time to time fed and wintered therein, and sold before they were clipped, had immemorially paid to the rector, his farmer or tithe gatherer, a *modus* of one penny, and no more, for every such sheep yearly at Lady Day, in lieu of the tithes of and for the depasturing and agistment of all such sheep; that such *modus* had been, from time to time during all the said time, accepted and taken for and in lieu and satisfaction of such tithes by the rector, his farmer or tithe gatherer, till lately that the plaintiff objected thereto and refused to accept the same. They denied that they had subtracted any tithes whatever which were due to the plaintiff, save only as aforesaid, and the said *modus*es which the plaintiff had refused to accept; and they averred that they all along had been and were respectively ready to account with and pay him the same, and that they never had refused so to do.

The cause heard  
and adjourned.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel on the twenty-eighth day of June last on both sides; and reading the answer and several depositions taken in the cause, the further hearing of the cause was adjourned to this present term, to be further heard and argued upon as to the questions of clover and the *modus* for lambs. The cause came on to be further heard this day; and upon full debate of the matter;

The cause again  
heard.

The *modus*, as to  
lamb, declared  
to be rank.

THE COURT declared, that the *modus*es alledged in the pleadings for lambs fatted or impastured are too rank; AND THEREFORE ORDERED the defendant *Wilson* to account with the plaintiff for the tithes in kind of all the lambs and sheep by him fatted and impastured in the parish in the year 1763, and satisfy the plaintiff the same.

The tithes of a-  
gisting barren  
cattle decreed.

THE COURT further ordered the defendant *Harrison* likewise to account for the tithes of agistment of all barren and unprofitable cattle by him fed and depastured within the parish during the said time, and to satisfy the plaintiff the same.

THE

THE COURT further ordered a trial at law upon the following issue, TO WIT, "Whether it was the custom of the parish of *Hemsworth* in the pleadings mentioned, for time immemorial used, for the tenants and occupiers of lands lying within the same parish, at their own expence to cut and make the first crop of clover grown thereon into hay, and great cocks, and to render and pay to the rector of the said parish for the time being, his tenant or farmer, the tenth part or tithe of the second crop of clover grown upon the same lands, and cut and made into hay in the same year."

Further directions to be reserved till after trial had, &c.

The issue came on to be tried before MR. JUSTICE GOULD at the assizes at *York* on the ninth of *March* 1771, when the plaintiff undertook not to make any demand of the tithe of the second crop of clover during the time he should continue rector, but this was agreed to be without prejudice to the question whether such tithes were due; and a juror was accordingly withdrawn, and the settlement of the account betwixt the parties referred to *Stanhope Harvey, Esq.*

Wood  
against  
HARRISON.

An issue directed to try the custom as to the second crop of clover.

See S. C. Ambler, 563.

The plaintiff agrees not to demand the tithe of the second crop.

# THE DEAN AND CHAPTER OF WESTMINSTER against GWILLIAM.

MICH. TERM.  
10. GEO. 3.

*Worcestershire, 15th December 1769.*

THE bill stated, that the dean and chapter of *Westminster* were the impropiators of the rectory of *Mathon*, in the county of *Worcester*, and as such entitled to all the tithes, both great and small, yearly arising in the said parish and in the tithable places thereof; that the plaintiff *Cliffe* was, at *Michaelmas* 1750, until the twenty-first of *April* 1765, the lessee under the said dean and chapter of all the said tithes; that the said *Cliffe*, by indenture dated the twenty-fifth of *March* 1764, assigned to the plaintiffs *Foley* and *Price* all arrears of the said tithes that were due to the said *Cliffe* at *Michaelmas* 1763, IN TRUST to be applied in payment of the debts of the said *Cliffe* as therein mentioned; that by lease, dated the twenty-fourth of *April* 1765, the dean and chapter of *Westminster* demised the said tithes to the plaintiffs *Foley* and *Price*, to hold for the lives of the said *Cliffe* and others, upon the trusts in the said indenture of the twenty-fifth of *March* 1764, expressed, at and under certain rents therein mentioned; that the defendants had, for several years past, severally occupied farms and lands in the parish of great value; that they had yearly thereon large quantities of corn, grain, hay, wood, wool, lambs, pigs, calves, colts, fruit, hops, turnips, clover seed, or some of them; that the tithes thereof became due and payable to the plaintiff *Cliffe*, and ought to have been paid to him, or to his trustees aforesaid; that the defendants had neglected and refused to set out and satisfy, and had not, nor had any of them, paid or answered to the plaintiffs the several tithes, or any of them, except the tithes of

The dean and chapter of *Westminster*, as impropiators of *Mathon*, in *Worcestershire*, are entitled to the great and small tithes of *Spout Farm*, *Horngreen Farm*, *Hall Court Farm*, and *Croft Farm*, in kind.

THE DEAN AND  
CHAPTER OF  
WESTMIN-  
STER  
against  
GWILLIAM.

of certain premises occupied by the defendant *Elizabeth Dangerfield*, and the tithes of the said wood, or made any agreement, composition, or satisfaction for the same in lieu thereof, although they had been frequently requested so to do; that the tithes, both great and small, were payable in kind for the several lands within the said parish, in the respective occupations of the defendants, and what were occupied by *Elizabeth Dangerfield* and *John George*; and that the certain sums of money which had been accepted in lieu of tithes in kind were only temporary compositions, and not prescriptive *modus*; that the defendant *Susannah Gwilliam* had duly proved the will of the said *Elizabeth Dangerfield*, and had possessed herself of her assets sufficient to answer the plaintiffs demands for the tithes subtracted and withheld by the said *E. Dangerfield*. The bill therefore prayed, that the defendants *S. Gwilliam*, *J. Cole*, and *M. Vobe*, might respectively admit assets of their respective testator and testatrix come to their hands respectively sufficient to pay the several and respective debts of such testator and testatrix; that the defendants *Samuel Gwilliam*, *S. Smith*, and *J. Spencer*, respectively might, upon a full and just discovery of the premises, be decreed to pay to the plaintiffs respectively, according to their several interests therein, for all and every the said tithes by them respectively subtracted, or the value thereof; that the defendants *S. Gwilliam*, *J. Cole*, and *M. Vobe*, as executrix and executors of *E. Dangerfield* and *J. George*, might also be respectively decreed and obliged to pay or make satisfaction out of the assets of their respective testators to the plaintiffs, according to their several interests therein, for all and every the said tithes by the said *E. Dangerfield* and *J. George* respectively subtracted as aforesaid, or the just value thereof; that the said *H. Cliffe* and the plaintiff's estates, rights, and interest in the said tithes in kind might be established; but that in case the defendants, or any of them, should be able to prove any *modus* or *modus* payable for and in lieu of any tithes for any lands within the said parish, that then the said defendants might account with the said *H. Cliffe* and the plaintiffs, and be decreed to pay what shall appear due to them for such *modus* or *modus*.

The defendants said, that they believed the said dean and chapter of *Westminster* were the impropiators of the said rectory; that the plaintiff *Cliffe* was, at *Michaelmas* 1750, and from that time to the twenty-fifth of *April* 1765 had been, the lessee of the said tithes; that he, about the twenty-fifth of *March* 1764, assigned to the other plaintiffs, by indenture dated about that time, all arrears of the tithes thereof, in such manner as is stated in the bill; and that the dean and chapter did execute such lease to *Foley* and *Price*; but they denied, that the plaintiffs were entitled to tithes in kind for all or any of the lands in their possession; for that in lieu thereof there had been an immemorial custom



custom for the respective occupiers of lands, tenements, and hereditaments in the parish, to pay to the impropiators, or their lessees, certain annual sums, by way of *modus* or compositions for the said tithes; and they set forth the farms and lands they severally occupied; and the values thereof, and those which had been occupied by *Elizabeth Dangerfield* and *John George*, whom they admitted had died about the time in the bill mentioned; and that they had proved their said wills, and were possessed of sufficient assets. They then stated, that it was the immemorial custom for the impropiators to take, as a *modus* in lieu of all manner of tithes both great and small yearly arising upon *Spout Farm* and *Hornsgreen Farm*, in the possession of the defendant *Samuel Gwilliam*, the yearly sum of eight pounds, three shillings, and fourpence; that they had paid the same up to *Michaelmas* 1759; and that the plaintiff *Cliffe* had since that time refused to accept the same, though it had been frequently tendered.

THE DEAN AND  
CHAPTER OF  
WESTMIN-  
STER  
against  
Gwilliam.

The defendant *Samuel Smith* set up a *modus* of three pounds, eleven shillings, for his farm and lands called *Hall Court Farm*; and said, that the same had been paid up to 1750, and that the plaintiff had since refused to accept the same.

All the defendants said, that there had been an ancient and immemorial usage for the impropiators to take, as a *modus* in lieu of all manner of tithes both great and small yearly arising in and upon the farm and lands called *Croft Farm*, in the possession of *John Spencer*, the yearly sum of three pounds, six shillings, and sixpence; that he had frequently offered to pay the same; and that the plaintiff had refused to accept thereof.

The plaintiffs replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel for all parties; and reading the several proofs taken in the cause; the leases; the deed of trust; the defendants answers; and on producing a copy of a terrier; and the defendants counsel objecting to the reading thereof, and the objection being allowed by the court; and upon reading an order to prove the following exhibits *viva voce*, viz. a survey from the augmentation office, part relating to the rectory of *Mathon*; and upon full debate of the matter;

THE COURT ordered the deputy remembrancer to take an account of the arrears of the yearly sum of five pounds and fourpence which became due from *Elizabeth Dangerfield* in her lifetime as a composition for the tithes of the farm and lands by her occupied in the said parish; and that what should be found due on that account should be answered by the defendants *Samuel Gwilliam* and his wife out of the assets of their said testatrix *Eliz. Dangerfield*, if so much should remain in their hands unadministered; but that in case sufficient assets should not so remain in their hands, that then they (as they having by their answer admitted

THE DRAUGHT  
CHAPTER OF  
WESTMIN-  
STER  
against  
GWILLIAM.

admitted assets of their said testatrix sufficient to satisfy the plaintiffs demands) should answer such sum so found due out of their own proper money to the plaintiffs *Foley and Price*, to be by them applied and disposed of upon the trusts and for the purposes of the said indenture of the twenty-fifth of March 1764 mentioned.

THE COURT further ordered the deputy to take an account of the yearly sums of three pounds, eleven shillings, and five shillings and sixpence, which became due respectively from the said *John George* in his life-time, as a composition for the tithes of the farms and lands by him occupied in the said parish; and that what should be found due on that account should be answered by *John Cole*, *James Vobe*, and *Mary* his wife, out of the assets of their said testator, &c.

THE COURT further ordered the deputy remembrancer to take an account of the arrears of the respective yearly sums of five pounds and fourpence, and three pounds, three shillings, which became due and payable from *Samuel Gwilliam* previous to the filing of the said bill as a composition for the tithes claimed by the plaintiffs in respect of the said farm and lands in the parish of *Mathon* by him occupied as aforesaid; and that the said *Samuel Gwilliam* should from the foot of the said account so last directed to be taken, account before the deputy remembrancer for the full value of the tithes of all the titheable matters and things which have happened, renewed, and arisen, from and out of the said farms and lands so by him occupied as aforesaid at any time since the filing of the said bill; and that what should be found due from the said *S. Gwilliam* on the said accounts last directed, should be answered and paid by him to the plaintiffs *Foley and Price*, to be by them applied, &c.

THE COURT further ordered the deputy remembrancer to take an account of the arrears of the yearly sum of three pounds, eleven shillings, which became due and payable from the defendant *S. Smith* previous to the filing of the said bill, as a composition for the tithes claimed by the plaintiffs in respect of the said farm and lands in the said parish by him occupied; and that the said defendant should, from the foot of the said account so last directed to be taken, account for the full value of the tithes of all the titheable matters and things which had happened, renewed, and arisen from and out of the said farm and lands so by him occupied as aforesaid at any time since the filing of the bill; and that what should be found due from the said *S. Smith* on the said account last directed should be answered and paid by him to the plaintiffs *Foley and Price*, to be by them applied, &c.

THE COURT also ordered the said deputy to take an account of the arrears of the yearly sum of three pounds, six shillings, which

which became due and payable from the defendant *John Spencer* previous to the filing of the said bill, as a composition for the tithes claimed by the plaintiff in respect of the farm and lands in the said parish occupied by him as aforesaid; and that the said defendant shall, from the foot of the said account so last directed to be taken, account before the said deputy remembrancer for the full value of the tithes of all the titheable matters and things which have happened, renewed, and arisen from and out of the said farm and lands so by him occupied as aforesaid at any time since the filing of the bill; and that what shall be found due from the aforesaid defendant on the said account last directed shall be answered and paid by him to the plaintiffs *Foley and Price*, to be by them applied, &c.

THE DEAN AND  
CHAPTER OF  
WESTMIN-  
STER  
against  
GWILLIAM.

THE COURT further ordered the said deputy to take an account of the full value of the tithes of all the titheable matters and things which had happened, renewed, and arisen from and out of the farms and lands occupied by the defendant *Cole* since the filing of the bill; and that the said defendant *Cole* should pay what should be found due from him on taking such account to the said plaintiffs *Foley and Price*, to be by them applied, &c.

THE COURT also ordered, that the defendants should also pay to the plaintiffs costs of this suit, to be taxed by the said deputy remembrancer, to whom it is hereby referred to tax the same: and that further directions should be reserved until after the report, &c. &c.

THE COURT FULL.

SERJEAUNT *against* ADEANE; *et à Contra*.

MICH. TERM,  
10. GEO. 3.

Gloucestershire, 16th December 1769.

THE bill stated, that in *February* 1765 the plaintiff was duly presented to the vicarage of *Aure*, in the county of *Gloucester*; that he had ever since been, and still was, vicar thereof; that he had thereby become entitled to receive all tithes and offerings due to the vicar for the time being; or a satisfaction for the same; that the master and four wardens of the fraternity of the art or mystery of *Haberdashers*, in the city of *London*, the owners of the said impropriate rectory, and of the great tithes arising therein, by a lease under their common seal, dated the twenty-seventh of *February* 1765, had demised to him all that the rectory of *Aure*, together with the tithes of corn, hay, and wood arising therein; that the parish of *Aure* had been immemorially, or for a great number of years past, divided into the several tithings of *Aure*, *Blidsoe*, *Hagloe*, *Ethre*, *Blakeney*, and the *Wood Side*, and gone under the two divisions of *Aure* and *Blakeney*, the former comprehending the tithings of *Aure*, *Blidsoe*, and *Hagloe*, and

The vicar of *Aure*, in *Gloucestershire*, is entitled to the small tithes of the whole parish in kind, excepting garden stuff, for which there is a *modus* of 1d. a year.

VOL. III.

S

the



SERJEANT  
AGAINST;  
ADEANE;  
et Contra.

the latter the tithings of *Etloe*, *Blakeney*, and *the Wood Side*; that there was within the said parish, in the division of *Blakeney*, A CHAPEL OF EASE annexed to the church of *Aure*; that his immediate predecessor, in the year 1722, became vicar, and about the same time lessee of the great tithes of the division of *Aure*; that he had continued vicar and lessee till his death on the twenty-fifth of *December* 1764; that by some ancient endowment, prescription, or usage, the vicar was well entitled to receive the tithes in kind of all milk, calves, wool, lambs, pigs, fowls, colts, agistments, garden stuff, apples, pears, and all other small tithes arising in the said parish, and particularly in the tithing of *Etloe*; that all the said several tithes, together with all the great tithes arising in the said parish, had been always paid in kind or compounded for until he became vicar and lessee; that the defendant, during all the time that his predecessor had been vicar and lessee, had been, and still was, owner or occupier of divers lands in the said parish, and particularly in the tithing of *Etloe*; that he had thereon various titheable matters, the tithes whereof were due to him as vicar and lessee; that since his induction to the said vicarage, the defendant had had various other titheable matters on his said lands prior to the twenty-fifth of *March* 1766, the tithes of some part of which he had paid in kind, or satisfied the plaintiff for, though not to the full value; that he, the plaintiff, had therefore caused notice to be given to the defendant to set out all his tithes in kind from and after the twenty fifth of *March* 1766; that the defendant had ever since that time occupied divers lands in the parish, whereon he had had various titheable matters and things; that in the year 1766 he set out the tithe of his corn, grain, and hay, and also the tithe of some wool which he had sheared in that year; that he, the plaintiff, hoped he would have set out the tithes of all the other titheable matters which he had had in that year, and have paid him for his *Easter offerings*; but that he had refused so to do, and pretended that he was not entitled to the tithes in kind. The bill then charged, that the former occupiers of lands therein, and particularly the defendant himself, had heretofore, for his predecessor, set out their tithes in kind of milk, calves, lambs, agistment, pigs, colts, geese, eggs, apples, pears, and all other tithes great and small, or had paid temporary compositions in lieu thereof; and that since the twenty-fifth day of *March* 1766 he had milk, calves, lambs, lambs' wool, apples, pigs, turnips, poultry, eggs, honey, and divers other titheable matters (exclusive of corn, grain, hay, and sheeps' wool, the tithes of which he admitted he had received), the tithes of all which were due to him, especially the tithe of the wool of lambs sheared by the defendant, to which he was entitled at the very time they were sheared; that the defendant had also fed and depastured dry, barren, and unprofitable cattle; that he had

also

also depastured sheep, which he had sold or removed out of the parish before shearing time ; and that he was entitled to the tenth part of the value of the agistment of such sheep and cattle. The bill also charged, that if there was any terrier, it had been unfairly obtained from his predecessor ; that he had caused his name to be erased therefrom ; and that, as it was not consented to by all lawful parties, it was not, as the defendant pretended, binding on the plaintiff. The bill further charged, that the defendant had several persons in his family for whom offerings were yearly due ; that he had cut and sold great quantities of coppice wood, the tithes of which he had refused to set out, or to make him any satisfaction for. The bill also charged, that the defendant and the several other occupiers of lands in the parish, when they did not set out their tithes in kind, had always made temporary compositions with the vicar for all their tithes ; that the said composition had been different at different times ; that they had no respect to any *modus* whatever ; that the continuances of them depended on the mutual will and pleasure of the contracting parties ; and that, in the receipts given for the same, it was expressed, that the payments were for temporary compositions, or as payments for tithes in kind, and not for any ancient *moduses* or customary payments. The bill further charged, that the tithes of apples and pears were payable in kind ; that until lately no quantity of cyder had been made in the parish ; that the common practice had heretofore been, for the occupiers to ship off their apples to a foreign market, and to pay the vicar the tenth part of the money which arose by the sale thereof, in lieu of the tithes in kind ; that such practice had lately been discontinued, and the apples made into cyder ; but that the different application of the fruit could not alter the vicar's original right to the tithe thereof, which attached thereon the moment the fruit was ripe and gathered. The bill also charged, that the tithes of calves, lambs, and pigs were not titheable until they could support themselves without any assistance from their dams ; and that where there was a less number than ten, a rate or proportional tithe was payable for the odd numbers ; but which the defendant had refused to pay. The bill therefore prayed, that an account might be taken of all such the titheable matters which the defendant had on the lands occupied by him in the said parish since the plaintiff's induction to the vicarage, for the tithes of which he had not made any satisfaction ; and pay what should appear to be justly due for such tithes, and for *Easter* offerings.

SERJEANT  
against  
ADEANE ;  
et c. Contra.

The defendant said, that the parish of *Aure* had been immemorially reputed to consist only of the six several tithings of *Aure*, *Blidloe*, *Hagloe*, *Blakeney*, *Etloe*, and *Etloe* part of the *Duchy of Lancaster* ; that it had also, for some years past,

SERJEANT  
against  
ADEANE;  
et c. Contra.

gone under the two denominations of *Aure* and *Blakeney*, the former containing the tithing of *Aure* and some parts of the tithings of *Blidloe* and *Hagloe*; the latter of *Blakeney*, and *Etloe*, and *Etloe in the Duchy*, and the remaining parts of the tithings of *Blidloe* and *Hagloe*; that the said parish being large, and the church standing on the side thereof in the division of *Aure*, there was A CHAPEL OF EASE standing on the other side of the parish in the division of *Blakeney*; that the *Haberdashers Company* were owners of the rectory impropriate, and of the tithes of corn, grain, and hay therein; that the vicars of the parish had, by some ancient endowment or otherwise, been immemorially entitled to the tithes of milk, calves, wool, lambs, pigs, fowls, agistment tithes, garden stuff, apples, pears, wood, groves, and all other small tithes, as to some parts of the parish, in kind, and as to the residue to some customary payments in lieu thereof; that for a great number of years past there had been, and still was, another minister, besides the vicar, to perform divine service in THE CHAPEL; that the *Company of Haberdashers*, by lease or otherwise, had permitted the great tithes of the division of *Aure* to be enjoyed by the vicar, and those of the division of *Blakeney* by the other minister for serving THE CHAPEL; and that the said minister had continued the said great tithes in *Blakeney Division* until the presentation of the plaintiff; that the plaintiff's predecessor had possessed the great tithes in the division of *Aure* till his death in 1765; that the said company had, since the plaintiff became vicar, demised to him the said rectory, and the tithes of corn, hay, and wood, within both divisions; but although he was thereby entitled to the tithes in kind of all corn, grain, and hay, he was not so entitled to the tithes of wood, the same being mentioned in the terrier to be a vicarial tithe. The defendant also admitted, that the plaintiff was entitled, as vicar, to all such tithes and offerings as were justly due to the vicar of the parish, or to such customary payments as had been paid in lieu thereof; but he denied that he had ever heard that he was entitled to the tithes in kind of all milk, calves, wool, lambs, pigs, fowls, agistments, garden stuff, apples, pears, and other small tithes, or that the same had been usually paid in kind or compounded for by former vicars; and he insisted, that, by the custom of the parish, the vicars had received of the occupiers of land therein the tithes in kind only of such titheable matters, and the sums of money in lieu of the tithes of such other titheable matters as were after-mentioned, and not to any other tithes in kind or other sums of money in lieu thereof: namely, that for calves they were to make even at *Easter* for as many as had fallen between *Faster* and *Easter*: for example, that he who had ten calves fallen should pay the tenth for the tithe thereof when the said calf was five weeks old; that if the calf was five weeks old at *Holy Rood Day*, he should pay him then; if not, that the vicar should



should stay till after that day, which is the *third day of May*; and the vicar must take the calf at the month's end; that if the owner had but seven calves, that then the vicar should take the seventh calf, and pay to the owner three halfpence; that if there were eight or nine calves, that then the vicar should take one, and pay to the owner so many halfpence as the number of calves wanted of ten: thus, if there be eight calves, one penny; if nine calves, one halfpenny; that in case there were not seven calves, that then the owner should pay to the vicar for so many calves as are fallen in manner following, *viz.* for every calf sold, the tenth penny; for every calf weaned, one halfpenny; and for every calf killed for the owner's use, the left shoulder thereof; that by the said custom they drive not but betwixt *Easter* and *Easter*; and that if any calves be not converted at *Easter*, they are to give the vicar notice of them when they come to reckon with him and so pay him after when they are converted as aforesaid, and not to reckon with him for those fallen after *Easter*. He also stated, that the custom was to pay one penny for every milch cow, in lieu of her milk. He also stated, that the custom was to pay the tithe of lambs on the third of *May*; that the owner should pay one lamb in seven; and that if he has no more, the vicar should pay the halfpence to the owner in the same manner as for calves; but that if the owner had under seven, then he should pay one halfpenny a lamb for as many as he had, and not drive them at all: that the manner of tithing of lambs was thus: the owner is first to choose two lambs, and the vicar the third; that afterwards, if the owner has more tithe lambs than one, he is to choose nine more, and then the vicar the tenth; that seven out of the nine chosen by the owner are to make up the former choice ten, the other two to remain according to custom; and that then the vicar is to choose the next, being the third, and so to go on; but that if the owner have any odd lambs, he must pay one halfpenny a lamb for them, and not drive them to another year. He also stated, that the tithe of wool was payable when they sheared, either by the tenth fleece or the tenth pound according as the vicar and owners could agree; but that if any sheep had been bought so as to have been only wintered in the parish, they are to pay but half tithes; and that if they buy them and shear them within one month, no tithe is due; that when they sell any sheep, whether bought or bred, if they keep them one month after they shear them, they are to pay to the vicar one penny a-piece for every sheep so sold, and no more; that if they sell the said sheep at any time before shearing time, they pay the same; and that they are to pay to the vicar one penny for every sheep bought into the parish, and sold again, if they keep them one month before they sell them, whether they shear them or not. He also stated, that the custom was to pay one pig in ten; but that if the owner had but seven against *Easter*, and there was

SERJEANT  
against  
ADVERSARY;  
et Contra

SERJEANT  
against  
ADEANE;  
et c. Contra.

no probability of having any more fallen before *Easter*, then the owner is to pay a tithe pig at seven, otherwise they are driven between *Easter* and *Easter* to ten; and that if it shall happen that the vicar hath one pig in seven against *Easter*, he must then pay the halfpence as for calves and lambs; and that if the owner hath odd pigs above ten or under seven, he is to pay the halfpence for the odds at *Easter*, and no other time in the year; that the manner of tithing pigs is the same as lambs aforesaid, and they are due at three weeks old at the furthest. He further stated, that one penny was payable for a colt at *Easter*. He also stated, that tithe of geese was payable at *Lammas*; that the eggs of hens, ducks, and turkies, were payable in *Lent*; for every hen, two eggs; for every duck, two eggs; for every turkey, two eggs; and for a cock and drake, three eggs. He also stated, that for *meat* pears, and apples for sale, the tenth bushel was payable at the tree, but that when the owner gather, giving notice thereto to the vicar, or when, upon request made by the vicar, the owner houses the tithe pears or apples, and sells them with his own, which he may refuse to do, that then the tenth penny is to be paid to the vicar at *Easter* for what he has sold. He also stated, that threepence a pipe was payable in *Aure* for cyder, and twopence a pipe in all the rest of the parish; and that if the owner sold the cyder-fruit, he was to pay the tenth penny. He also stated, that one penny was payable for a garden; that the tenth part of the honey and wax after the bees were taken was payable, and not the tenth swarm; that the tenth parts of flax, of hemp when cut or pulled up, and of hops when gathered, were payable. He also stated, that for wood under twenty years growth, fourpence was payable for every one thousand fold; for old trees or timber trees, nothing; for fuel for a man's own house, nothing; for groves, the tenth part, or tenth one thousand. He also said, that for offerings twopence a communicant was payable at *Easter*, when they reckoned with the vicar for all dues not received in kind. He also said, that there was set a time for paying all kinds of tithes, which was not to be altered without the consent of the vicar and owner, neither in time, manner, or in kind. He also said, that by the like custom several sums of money were due to the vicar for marriages, churchings, and burials. He also said, that the usage and custom of paying the small tithes in kind of such titheable matters as were due in kind, and of paying such customary sums in lieu of the residue, had been exercised in the said parish time out of mind before 1705, and had, time out of mind, been reduced into writing, which he had in his custody; and that he believed there were some writings in the parish, and others that were deposited in the bishop's registry of the diocese respecting the tithes of the said parish; and that the terrier was not, to his knowledge or belief, obtained by any fraud. He insisted, that by the said terrier in 1699, and by the custom of the parish time out of mind,

it appeared, that the vicar was not entitled to tithes in kind of milk, colts, garden stuff, or of apples and pears made into cyder and perry, but only to such customary payments in lieu of those tithes as were therein mentioned; that thereby the plaintiff appeared to be entitled to the tithes in kind only of calves, lambs, pigs, wool, eggs, pears and apples sold (in the said terrier called meat pears, and apples), honey, wax, hemp, flax, wood, and agistment tithes, and that in the manner and subject to such mutual payments as were particularly mentioned therein; and that he believed that the small tithes of all the titheable matters in the said parish had been, time out of mind, paid to all former vicars of the said parish according thereto. He also said, that although the former vicars, to avoid the trouble of collecting the tithes in kind, had generally compounded with the occupiers of land for such tithes as they were entitled to in kind at certain sums, according to the annual value thereof, and such occupiers had agreed to pay certain annual sums in satisfaction of the money accustomedly due in lieu of the tithes of such matters whereof tithes in kind were not due, yet that such last-mentioned annual sums were estimated at the gross amount of such accustomedly sums, and not by way of composition for the value of such tithes as if taken in kind; and such last mentioned sums being for the most part, if not always, paid to the vicar together with the said composition money, such vicars generally gave receipts for those composition sum and sums due by custom together in one entire sum, as for money due for small tithes or privy tithes generally, without distinguishing how much for one, and how much for the other; that although the sums so paid to the vicars might vary, yet such variations were owing to the different valuations of the tithes which were due in kind, and to what it was thought the customary sums would amount to, and not otherwise. He admitted, that in the year 1727 he had entered, on his father's death, on his estate at *Etloe*; and that, in 1730, he entered on his wife's estate, called *Netherball*, both in the tithing of *Etloe* and division of *Blakeney*, and had ever since occupied the same, except certain grounds occasionally let to tenants; and that he had on the said estates, besides corn, grain, hay, and wood, several other titheable matters, as in his answer were set forth. He said, that he believed that before he entered on the said estates, to avoid trouble in collecting of tithes in kind, the then owners and occupiers of the said estates and the vicar made an estimate of the yearly value of the sums accustomedly due to the vicar for such titheable matters whereof tithe in kind was not due, and of the value of the tithes which were due in kind; and that on such estimation made of the defendant's own estate, the money agreed to be paid for the privy tithes and customary payments was settled at fourteen shillings *per annum*, and for *Netherball Estate* ten shillings yearly; which sums were paid until the death of the plaintiff's predecessor;

SERJEANT  
against  
ADEANE;  
et à Contra.



SERJEANT  
againſt  
ADEANE;  
et 2 Contra.

predeceſſor; in which ſums *Eaſter* offerings were included; that receipts were given for the ſame, which the defendant had; and that ſuch ſums are therein mentioned to be received for ſmall or privy tithes, without diſtinguiſhing what for compoſitions, or what for *moduſes* or customary payments. He ſaid, that he believed that when compoſitions were made by former vicars, eſtimates were taken of the annual value of the tithes payable in kind, and of the amount of the *moduſes*, and from thence the ſums annually to be paid were ſettled and paid accordingly. He denied, that he or any other occupier of lands had ever paid tithes in kind to his knowledge for any milk, colts, garden ſtuff, or apples or pears made into cyder or perry, or that any ſmall tithes had ever been paid in kind, or any compoſition for the ſame, other than as aforeſaid. He alſo denied, that he had ever pretended that the plaintiff was not entitled to tithes in kind, except as aforeſaid, or that he was only entitled to half the aſſignment tithe for wintering ſheep in the ſaid pariſh, except that he did inſiſt, that if any ſheep brought into the pariſh were only wintered there, the vicar was, by the ſaid terrier or cuſtom, entitled only to half the tithe. He admitted, that he inſiſted on the ſaid terrier as being evidence of the cuſtom of paying certain tithes in the ſaid pariſh for time out of mind, and of the payment of customary ſums in lieu of certain tithes, and of the times of paying thereof: and he ſet forth his titheable matters and things, and the values, and what he had paid to the plaintiff for the ſame; and admitted, that on or about the twenty-fifth of *March* 1767, he received from the plaintiff a notice in writing of that date, requiring him thereafter to ſet out his tithes, both great and ſmall, according to law; and he ſaid, that he had tendered him the *moduſes* and the ſaid annual payments.

The defendant filed his croſs bill againſt the plaintiff, thereby ſtating the ſaid terrier and the cuſtom, and the ſeveral *moduſes* or customary payments in his answer, and ſeveral other matters therein alſo mentioned; and prayed, that the cuſtom (mentioned in the ſaid terrier) might be declared to be good and valid, and might be eſtabliſhed by the decree of the court; and that the vicar might be directed to accept and take of him a reaſonable ſum for the tithe of the ſaid calves, lambs, and lambs wool, ſubject to ſuch payments as to the ſaid calves and lambs as were mentioned in the ſaid terrier; and alſo the ſaid ſums of ten ſhillings and threepence for the customary ſums ſo as aforeſaid due and payable in lieu of tithe milk, garden ſtuff, and apples and pears made into cyder and perry, and for *Eaſter* offerings due at *Eaſter* 1767; and that he might be diſcharged therefrom.

The

SERJEANT  
against  
ADEANE;  
et c. Contra.

The vicar answered *the cross bill*, and thereby insisted on the same matters as he had before insisted on in his original bill; and particularly on the invalidity of the several *modus*es or customary payments mentioned therein, and of the custom of tithing as mentioned in the said terrier; and that he was entitled to tithes in kind of all titheable matters and things whatever yearly arising within the said parish of *Aure*, and to *Easter offerings*. He denied, that he had done any act to defeat or destroy the said pretended *modus*es or customary payments, other than by filing his bill to obtain payment of the tithes in kind.

The plaintiffs in both causes replied; the defendants rejoined; and witnesses were examined on both sides in the original cause; and both causes, pursuant to an order, came on to be heard together, and the depositions taken in one cause were read in the other, saving just exceptions; and upon hearing counsel on both sides for two days; and reading the several proofs taken on behalf of the defendant in the original cause and the plaintiff in the cross cause, viz. a receipt, dated the eleventh of *July* 1758, signed *Jackman Morfe* (the plaintiff's predecessor); and the counsel for the defendant offering to read an entry, called *the Terrier of Aure*, in a book entitled "*AURE VICARAGE*," and also the deposition of *W. Morfe* touching a paper found in the house of the said *Jackman Morfe* after his death, and the same being severally objected to by the counsel for the said original plaintiff, and such objections being allowed by the court; and on reading several depositions; and also several entries in the book before mentioned, entitled "*AURE VICARAGE*," relating to divers payments of money for or in lieu of tithes; and upon full debate of the several matters in question; and it not appearing to the court that the defendant in the original cause had any flax, turnips, wood, colts, pigs, geese, turkeys, honey, or turnips, during the time in the bill mentioned;

THE COURT ordered the original bill, as to the demand therein of tithes for the said matters, to be dismissed, with costs in respect thereof; but as the defendant examined witnesses in the original cause, and endeavoured to establish the *modus*es, for those matters, except only as to the flax, honey, and turnips, which *modus*es the court disallowed, the defendant was ordered to pay the costs occasioned by such examination.

THE COURT further ordered the defendant to account with the plaintiff for the value of the tithes of all other the titheable matters and things demanded by the original bill, and for *Easter offerings* for himself and his family above sixteen years of age, and to pay the plaintiff his costs in respect thereof.

THE COURT also ordered the defendant to account for the *modus* of one penny yearly for every ancient garden occupied by him within the said parish of *Aure* during the time in the bill mentioned, without costs.

THE

SERJEANT  
against  
ADEANE;  
et à Contra.

THE COURT further ordered *the cross bill*, as to every matter or thing therein contained, except as to the *modus* of one penny for every ancient garden to be dismissed with costs.

And the vicar having declined to try the validity of the said *modus* at law;

IT WAS FURTHER ORDERED, &c. that the said *modus* of one penny yearly, for every ancient garden within the parish of *Aure*, for and in lieu of the tithes of all garden stuff yearly arising therein, be established by the court with costs respectively.

MICH. TERM,  
10. GEO. 3.

STREET against WOODS.

Surry, 18th December 1769.

The rector of  
*Marrow*, in Sur-  
ry, claims the  
tithes of *Temple  
Court Farm* in  
kind.

THE bill stated, that about the year 1763, the plaintiff *Grossmith*, clerk, was presented to the rectory of the parish of *Marrow*, in the county of *Surry*; and that before he had received any tithes or other recompence for the same, he, by agreement in writing, dated the fourth of *January* 1764, demised all the great and small tithes yearly arising therein to the plaintiff *Street*, for three years, &c.; that the defendant, at the time of making the said agreement, was and still continued occupier of a certain farm called *Temple Court Farm*, belonging to *Lord Onslow*; that he had, during the said time, sowed or planted thereon wheat, barley, rye, oats, pease, and beans, and had reaped the same; that he also had thereon hops, hay, vetches, clover, ryegrass, cabbages, turnips, apples, pears, plumbs, cherries, milk, eggs, cheese, wool, bees, and other titheable matters, the tithes whereof were due to the plaintiff, as lessee, but which the defendant had refused to pay or to make any satisfaction for. The bill therefore prayed, that the defendant might discover whether he was not occupier of *Temple Court Farm*, or of some and what part thereof; the number of acres it contained; the yearly value thereof; the titheable matters and things he had had thereon; the values of the same respectively; that he, the plaintiff, in case the defendant insisted on any *modus de non decimando*, or any *modus* in lieu of tithes, might inspect all deeds, papers, and writings in his custody or power, relating to the said premises; that, if there were any which manifested that tithes had been paid in kind for all or any of the said lands, the same might be set forth *in hac verbâ* and produced; and that the defendant might account with him in the premises and pay him what should appear to be due thereon.

The defendant  
says, that *Temple  
Court Farm* con-  
sists of certain inclosed grounds in his possession, and certain uninclosed grounds in the possession of *Lord Onslow*; that the said inclosed grounds constituted *Clandon Park*; and that part of the uninclosed grounds were common fields; and that tithes are due for such uninclosed lands;

The defendant admitted, that *Grossmith* was rector of *Marrow*; and that he had demised the tithes to *Street*; and said,

that



STREET  
against  
WOODS.

that he occupied *Temple Court Farm* and certain inclosed grounds lying in the said parish as in his answer mentioned; that the said inclosed lands, together with other lands mentioned in his answer, which were in the occupation of *Lord Onslow*, constituted the ancient farm called *Temple Court Farm*; that the inclosed grounds were called *Clandon Park*; that the other lands were common fields uninclosed; that he had several titheable matters on the said lands; that *Street* had often applied to him for the tithes thereof or for a satisfaction for the same; and that he was accountable for the tithes of the uninclosed lands; but he insisted, that the plaintiffs were not entitled to tithes in kind arising from that part of *Temple Court Farm* which consisted of inclosed lands, or to any satisfaction for the same; for that the said inclosed lands had been immemorially parcel of *Clandon Park*; that the said park, before the dissolution of monasteries, belonged to the priory or hospital of *Saint John of Jerusalem in England*; that it consisted of the several closes of inclosed land mentioned in the answer, and also of several other closes also set forth; that the said park and farm, after the dissolution of monasteries, were granted by the crown to *Sir Henry Weston, Knight*, to whom also the manor of *Merrow* was then granted; that the same had since come by divers mesne conveyances to *Lord Onslow*; that he, the defendant, was tenant, under *Lord Onslow*, of such part thereof as was stated in his answer; that the residue thereof was in possession of his lordship, as part of his park at *Clandon*; and he insisted, that the priory of *Saint John of Jerusalem in England* was dissolved by the 32. Hen. 8.; that the said farm, together with the other possessions of the hospital were vested in THE CROWN by the said act; that when dissolved the prior and brethren thereof held *Temple Court Farm* discharged from the payment of tithes, by reason of their order, as friars of *Saint John of Jerusalem*; that by the said act, THE CROWN, after the dissolution of that hospital, and the patentees of the crown, and their heirs and assigns after the said farm was granted by the crown to them, held, and had a right to hold, the said farm and lands discharged from the payment of tithes, whilst they were in the occupation and manurance of the owners thereof who claimed under the said grant; that when the said farm had been demised for years, or at will, or otherwise to a tenant, and was not in the occupation or manurance of the prior and brethren of the said hospital, who had been owners thereof for time immemorial before the dissolution thereof, or of the crown, or grantee of the crown, or of the owner thereof claiming under such grant, the occupiers of *Temple Court Farm* had yearly paid (save during the time after mentioned) to the rector of *Merrow*, for the time being, or his agents, a certain annual payment of four marks of lawful money as a *modus*, in lieu and in recompence of all manner of tithes

that the inclosed grounds were formerly part of the possession of the priory of *St. John of Jerusalem*,

and discharged from the payment of tithes by reason of the order,

while in the manurance and occupation of the owners, under a grant from the crown;

that when they were let to tenants the owner paid a *modus* of four marks in lieu of the tithes thereof;

STREET  
against  
WOODS.

that although the said *modus* had not been actually paid, it had been satisfied by remitting the payment of a pension of *xl. 13s. 4d. a-year*, due from the rector of *Merrow* to the nuns of *St Margaret*, which pension was, on the dissolution of the nunnery, granted to the owner of *Temple Court Farm*.

tithes arising on the said *Temple Court Farm*, of which he, the defendant, occupied such part, and the said *Lord Onslow* the residue, as aforesaid. He also insisted, that the whole of the said inclosed grounds, constituting *Temple Court Farm*, or the inclosed grounds in the parish of *Merrow* called *Clandon Park*, formerly lay adjoining together with an hedge; and he set forth the boundaries thereof. He further said, that, for many years past, the said *modus* of four marks had not been, he believed, actually paid to the rector of *Merrow*, during such time as *Temple Court Farm*, or part thereof had been occupied by a tenant, and not been in the hands of the owner; but he insisted, that such *modus* had, during the time that the said farm had been in the hands of a tenant, and not in the hands of the owner, been satisfied as after mentioned, viz. that by a return of a certain commission of *King Henry the Eighth*, issued in the twenty-sixth year of his reign, to enquire concerning the true yearly value of all ecclesiastical benefices and spiritual promotions in the county of *Surry*, it appeared, that the rectory of *Merrow*, in the deanery of *Stoke*, near *Guildford*, being the same rectory, paid a pension of fifty-three shillings, and fourpence, to the prioress of the nuns of *Saint Margaret of Ivinghoe*, which priory was soon after, by act made the twenty-seventh year of the said king, given to his majesty and his heirs; that afterwards the said pension of fifty-three shillings and fourpence, paid by the rectory of *Merrow* to the priory of *Saint Margaret*, was duly paid and accounted for to the crown, in the minister's accounts, ending at *Michaelmas*, the twenty-eighth year of *Henry the Eighth*, being the next year after the dissolution of the said priory; that *Henry the Eighth*, by his letters patent dated the nineteenth of *April*, in the said twenty-eighth year of his reign, granted to *Sir John Dance, Knight*, the said annual pension of fifty-three shillings and fourpence issuing and payable as aforesaid; that *Richard Weston*, who was a descendant of *Sir Henry Weston*, to whom *Temple Court Farm* was granted, was owner thereof; that he also became owner of the said pension; that the said four marks, payable as a *modus* for the said farm from him to the rector of *Merrow* (the lands then being in the hands of tenants, and not of the said *Richard Weston*), being a sum equal to the said fifty-three shillings and fourpence payable by the said rector to him, he did not pay the said *modus*, because the rector did not pay the said pension. He further said, that the right and ownerthip of the said farm, and of the said pension, had ever since been in the same person; and that the same now belonged to *Lord Onslow*; that the said farm, or part thereof, had ever since been in the hands of tenants, and not in the hands of the owner; that by reason of such unity of possession, or right in the said farm and pension, the said *modus* and pension had not since been paid; that the plaintiff *Grossmith* had not paid the said pension, or any part thereof

STREET  
against  
WOOD.

thereof to *Lord Onslow*, and because such *modus* was only payable for the whole of the said farm, he insisted, that no tithes in kind were due for that part of the said farm which he held, and because the said pension had not been paid, therefore he refused to pay the said *modus*, so long as *Lord Onslow* was not a party to the suit, as he held a part of the said lands, for which the said *modus* was payable. He insisted, that he ought not to set out the quantities and values of any of the titheable matters and things which he had on the said *inclosed lands*. He also said, that he believed that *Clandon Park* and *Temple Court Farm* were one and the same *inclosed grounds* with the grounds of *Temple Court Farm*, which belonged to the friars of *Saint John of Jerusalem in England*; and that the said plaintiffs had not paid to his lordship the said annual rent of four marks, but had retained the same in lieu and recompence of all manner of tithes arising from the said *inclosed grounds* called *Temple Court Farm*, in satisfaction of the said *modus*. He denied, that he ever had in his custody any deeds, &c. which manifested that tithes in kind had been paid for the whole, or for parts of those lands which he insisted were not subject to the payment thereof. He admitted, that he had several titheable matters and things which he set out in his answer, and the values thereof, as well on the *inclosed* as on the *uninclosed grounds*, but denied, that such tithes were due to the plaintiffs for the reasons aforesaid; and said, that he had locked up the gates of his fields; and that he had a right so to do.

The plaintiff replied; the defendant rejoined; and witnesses were examined on the defendant's part; and upon reading several depositions taken in the cause; an order to prove and read exhibits. *viz.* a plan or description of the farm called *Temple Court Farm*, taken and delineated in 1630; a copy of a grant inrolled in the office of the lord treasurer's remembrancer of this court of the said manor of *Merrrow*, from *Queen Elizabeth* to *Sir Henry Weston, Knight*, dated the fourth of *January*, in the second year of her reign; a copy of a record remaining in the augmentation office at *Westminster*, being a particular of the lands and possessions granted to the said *Sir Henry Weston*; a deed or indenture, dated the twenty-third of *January* 1649, signed *Robert Bury*, and made between *Richard Weston*, and *Robert Bury*, clerk, parson of the church of *Merrrow*; a copy of a record from the office of the remembrancer of the first fruits, in this exchequer, concerning the true yearly values of all ecclesiastical benefices within the county of *Surry*, taken by virtue of a commission issued the twenty-sixth year of *Henry the Eighth*, whereby it appeared, that the rectory of *Merrrow* was chargeable with a pension of fifty-three shillings and fourpence payable yearly to the prioress of the nunnery of *Saint Margaret of Ivinghoe*; a copy of a record from the said augmentation

The cause  
heard.



STREET  
against  
WOODS.

mentation office of the minister's accounts of the manors, lands, and tenements heretofore under the government and survey of the late court of augmentation of the revenues of the crown for one year, ending at the feast of *Saint Michael the Archangel*, in the second year of *Queen Elizabeth*, whereby it appeared, that the manor of *Morrow* was heretofore parcel of the lands and possessions of the late priory or hospital of *Saint John of Jerusalem* in *England*; an indenture of settlement, dated the twenty-third of *January* 1646, signed by *Sir Richard Onslow* and others, and made previous to the marriage of *Arthur Onslow*, son and heir apparent of the said *Richard*, with *Rose Stoughton*; another indenture of settlement, dated the third of *November* 1649, on the marriage of the said *Richard Onslow*, with *Mary Foot*; copies of the records of two fines, viz. the one levied in *Hilary Term*, in the twenty-second year of *Charles the Second*, upon the marriage of *Arthur Onslow*, and the other levied in *Michaelmas Term*, in the seventh year of *Queen Anne*, upon the marriage of *Arthur Onslow Esq.* therein named.

The bill dismissed.

THE COURT ordered the bill to be dismissed, and the plaintiffs to pay the defendant his costs.

MICH. TERM,  
10. GEO 3.

NOEL against BURGIN.

Nottinghamshire, 21<sup>st</sup> December 1769.

The lessee of the impropriator of the rectory of *Kinalton*, in *Nottinghamshire*, claims the great tithes of the parish.

THE bill stated, that *Matthew*, late *Archbishop of York*, being, in right of his archbishopric, seised in fee simple of the rectory of *Kinalton*, in the county of *Nottingham*, did for himself and his successors, by indenture, dated the thirty-first of *July* 1753, demise, grant, and to farm let to the plaintiff all the said rectory and parsonage of *Kinalton*, together with all and singular the lands, tenements, meadows, pastures, feedings, commons, common of pasture, tithes, oblations, obventions, fruits, profits, commodities, advantages, emoluments, and appurtenances whatsoever thereto belonging, &c. (except the vicarage of *Kinalton*, and the gift and patronage of the same, and all manner of profits, fruits, rights, and commodities to the same belonging), to hold the same to the said plaintiff, his heirs and assigns for three lives, under the yearly rent of twelve pounds; that the plaintiff, on the execution of the said indenture, entered upon the said rectory and parsonage, and thereby became entitled to all the tithes of wheat, barley, oats, rye, and other corn and grain arising on the lands in the parish; that for six years past the defendant *Burgin* had held divers lands, tenements, and hereditaments therein, and had yearly growing thereon wheat, barley, oats, rye, and other corn and grain, the tithes of which he had refused to pay, under the pretence

NOEL  
against  
BURGIN.

pretence that there were *modus*es, or that the vicar was entitled thereto. The bill then charged, that the vicars were not entitled to the tithes of corn and grain arising in the parish, or in any part thereof, or to any *modus* in lieu thereof, but to the vicarial tithes only, either in kind or a *modus* in lieu thereof; and that he, the plaintiff, had paid such vicarial tithes arising from the *demefne lands* in his own occupation, in the like manner as other farmers and occupiers of lands had paid their said tithes. The bill then stated, that by ancient entry in the registry of the *Archbishop of York*, dated in 1264, of the presentation or induction of *Sir Hugh de Crosseby*, by the then *Archbishop of York*, to the vicarage of *Kinalton*, then called *Kinerwaldestone*, it appeared, that the vicarage was then endowed with the *small tithes* of the parish, and with oblations, obventions of the altar, wool, lambs, mortuaries, tithes of mills, a moiety of the tithes of hay arising from the jurisdiction of the chaplain of the parish, the blessed *Peter's pence*, and, exclusively of these things, with an annual payment of twenty shillings from the archbishop or farmers of the parish, by equal portions on the feasts of *Pentecost* and *Saint Martin*. The bill then stated, that all the lands held by *Burgin* had, till within a few years, been used for pasture lands, and had never been ploughed, broken up, or sowed with corn or grain, so that no tithe of corn or grain could arise therefrom, or become due to the rector or impropiator of the rectory or his lessee; that there were several other lands within the parish belonging to the *Earl of Strafford* and *John Hacker*, which were formerly used as pasture, and had lately been sowed with corn and grain, and that although certain *modus*es or customary payments were due and payable in respect of such lands for the vicarial tithes thereof to the vicars of *Kinalton* and *Colston Bassett*, yet that tithes in kind, or some compositions or payments in lieu thereof, had always been paid to the *Archbishop*, as impropiator of *Kinalton*, or his lessee, for all the corn and grain growing on the lands when the same had been ploughed; that notwithstanding tithes in kind of such corn and grain had been so paid, yet the said *modus*es had been paid to the vicars, in respect of the said lands in those years, as were paid before the said lands were broken up and ploughed, or as were paid in those years in which no corn or grain was grown on the said lands; and that this furnished strong evidence that such *modus*es, so payable to the vicars, were only payable in respect of the vicarial tithes. The bill therefore prayed, that *Burgin* might account for the tithes of all the corn, grain, and other titheable matters, which had arisen from the lands he held in the parish during the time aforesaid, and pay the value thereof; and that the plaintiff might be quieted in the enjoyment of such tithes for the future.

The

NOEL  
against  
BURGIN.

The defendant *Burgin* says, that he rents a farm at 100l. a year that was formerly only worth 40l. a year;

that he paid a *modus* of 4l. a year, viz. 3l. 12s. 6d. to the vicar of *Kinalton*, and 7s. 10d. to the vicar of the adjoining parish of *Colston Bassett*, in lieu of all the tithes of the lands in his occupation, except the tithe of eggs; that no tithes or *modus* except the said 4l. a year, has ever been paid for the said lands;

that it is in lieu of all tithes, great and small, except eggs;

that the said lands, being originally worth only 40l. a year, and the said *modus*, being an exact tenth part of such value, is evidence that it is in lieu of great tithes as well as small tithes.

The defendant *Burgin*, by his answer, admitted the plaintiff's title; and said, that he had been ever since *Lady Day* 1763, and then was in possession of a farm, consisting of a messuage, homestead, and several pieces of inclosed ground, at the yearly rent one of hundred pounds, and had grown and reaped thereon corn and grain; and he set forth the particular quantities and values thereof in each year. He admitted, that no tithes had been set out or satisfied by him to the plaintiff, in respect of the said corn and grain; and said that the vicar of *Kinalton*, and the vicar of the adjoining parish of *Colston Bassett*, had immemorially been, and still were entitled to the tithes of the lands occupied by him, or to some *modus* in lieu thereof, in the proportions following, that is to say, that if a *modus* of four pounds be paid in lieu of the said tithes, the vicar of *Kinnilton* is entitled to three pounds, twelve shillings, and twopence, part thereof, and the vicar of *Colston Bassett* to seven shillings and tenpence, the residue thereof; that the said vicars were, he believed, so entitled by virtue of some ancient endowment; that they had accordingly and immemorially received the tithes of the said lands, or a *modus* in lieu thereof, in the proportions aforesaid; that neither the tithes in kind of the said lands, nor any *modus* in lieu thereof, had ever, in the memory of man, been paid to the *Archbishop of York*, or to any other impropiator of the rectory, or to their tenant or farmer; that the said land had, ever since he had occupied them, paid the yearly sum of four pounds, in such proportions as aforesaid, to the said vicars, down to *Michaelmas* then last; that the said sum had been immemorially paid by all the owners and occupiers of the said lands, to the said vicars, in lieu of all tithes whatsoever, both great and small, except the tithe of eggs, arising on the said land. But he admitted, that the plaintiff, and other occupiers of lands in the parish, had usually paid to the said two vicars, in the proportions nearly as before mentioned, certain yearly sums in lieu of the small tithes only arising from their respective lands, and not in lieu of any great tithes arising therefrom; and said, that the several sums so paid in lieu of small tithes only were not so considerable in proportion to the value of the lands in respect of which they were paid as the said yearly sum of four pounds was in proportion to the yearly value of the lands occupied by him. He also said, that the yearly value of the lands occupied by him in *Kinalton* had, of late years, been greatly increased; for that above one hundred and fifty years since, the said lands were only worth forty pounds a year; and that the said yearly sum of four pounds, being about one tenth part of the yearly value, was strong evidence that the said yearly sum had been paid in lieu of great as well as small tithes. He admitted, that there might be such an entry in the registry of the *Archbishop of York*, as stated in the bill, with respect to the presentation of *Sir Hugh de Crosseby* to the vicarage, but he



he insisted that such entry was not of itself sufficient to prove, that the said lands were subject to the payment of great tithes to the rector, especially as no great tithes in kind or any satisfaction in lieu thereof had ever been paid to the rector, for or in respect of the said lands.

NOTE  
against  
BURGIN.

The defendant *Hardy* said, that he was, on the twenty-sixth day of *September* 1735, collated to the vicarage of *Kinalton*; that he had been ever since, and then was vicar thereof; and that he was, as such, entitled to all tithes, oblations, obventions, offerings, *modus*, and other payments due to the vicar of the said vicarage.

The vicar of *Kinalton* says he is entitled to all tithes due to the vicarage.

The defendant *Wright* said, that he was in *August* 1764 inducted to the vicarage of *Colston Bassett*; that he had ever since been, and then was vicar thereof; and that, as such, he was entitled to all tithes due to the vicar there.

The vicar of *Colston Bassett* says the like as to his vicarage;

The defendants *Hardy* and *Wright* admitted, that *Burgin* had, since 1763, been in possession of a farm in the parish; and they said, that the yearly sum of four pounds then was, and immemorially had been justly due and payable by the owners and occupiers of the lands so occupied by them, to the vicars of the said parishes, in such proportions as before stated, as a *modus* in lieu of all tithes (except the tithes of eggs) arising to them, as vicars, from the said lands; and that the same had been paid to them ever since they had been vicars thereof. They also admitted, that the plaintiff had obtained a lease from the *Archbishop of York*, of the rectory and the great tithes of *Kinalton*.

and both the said vicars say, that they had received the said *modus* in the said proportion, in lieu of all tithes except of eggs.

The defendant *Burgin* further insisted that part, if not the whole of the said lands occupied by him, had at different times been ploughed or broken up and sown with corn and grain for twenty years past, during all which time there had been constant opportunities for the rector of *Kinalton*, or his lessee, to have asserted his right to the tithes of corn and grain, if he had thought himself entitled thereto; but that no tithe in kind of any corn or grain whatsoever growing on the said lands, or any part thereof, had been ever delivered, paid, or demanded by any rector of the said rectory until about twelve years since, when the said demand was absolutely refused to be complied with. He said, that he believed there were several lands in the parish belonging to the *Earl of Stafford*, and also to the daughters of *John Hacker* as stated in the bill, which were sometimes used as pasture; and that in lieu of the tithes thereof certain yearly sums had been immemorially paid to the vicars of the said parishes in such proportion as before mentioned; but that although the said lands had, for a great number of years, been ploughed and sown with corn and grain, no tithes in kind of such corn or grain, or any *modus* in lieu thereof, had ever been paid to the rector, save as in the answer was men-

The defendant *Burgin* further says, that the rector of the said parish had never claimed the great tithe of the said lands;

NOEL  
against  
BURGIN.

and states the  
reason of the  
modus being pay-  
able to the vi-  
cars.

tioned. He also said, that the *modus*es paid by the occupiers of the said lands to the vicars aforesaid, in lieu of the tithes thereof, had been paid by the said owners or occupiers to the said vicars during the years in which the plaintiff had tithe in kind of corn and grain in like manner as when no corn or grain was growing there; but he insisted, that it was not from thence to be presumed, that such *modus*es were for vicarial tithes only, and not in lieu of the tithes of corn or grain, especially as no tithe in kind of any corn or grain had ever been delivered in satisfaction thereof, to the rector of the said rectory, save as in the answer mentioned, about twelve years ago; and that the delivery of such tithes in kind of corn and grain by them ought not to be any evidence against him. He said, that he believed that it appeared by the endowment of the vicarage of *Colston Bassett*, that the vicarage thereof was endowed with the tithe of four ox-gangs of land in the village of *Newland*, as well of corn as of hay; and that at the time of the said endowment the village of *Newland* was a considerable place lying between the lordships of *Kinalton* and *Colston Bassett*; that there was formerly a chapel there; that the vicar of *Colston Bassett* was parson thereof; that such village was after the said endowment called *Newbold*; that it came in time to decay; and that the extent thereof was not well known. The defendant also said, that he believed there were several lands containing about forty-three acres lying in the said parishes, or one of them, the tithes whereof, or certain yearly sums, by way of a *modus* or composition for the same, were, from time to time, paid to the vicar of *Colston Bassett*, and were in lieu of the tithes of the four ox gangs of land with the tithes of corn and grain whereof the vicar of *Colston Bassett* was endowed; and insisted, that certain parcels of land in his occupation were, as he believed, part of the said four ox gangs; and that seven shillings and tenpence yearly had been from time to time paid by the occupiers of the said lands to the vicar of *Colston Bassett*. He also said, that as it appeared from the said endowment, that the vicar thereof was endowed with the great tithes, it ought to be presumed, that the yearly sum of three pounds, twelve shillings, and twopence, paid by him to the vicar of *Kinalton*, had been and was paid in lieu of all tithes whatsoever arising from the rest of the lands lately occupied by him, and not in lieu of small tithes only.

The cause  
heard.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides, and on reading a lease, dated the thirty-first of July 1753, from the *Archbishop of York*, to the plaintiff of the rectory and parsonage of *Kinalton*; a copy from the consistory court of the *Archbishop of York* of the endowment of the vicarage of *Kinalton*; an exhibit, intitled *Ordinatio Vicarie Colston Bassetti*, dated the fourth calend of November 1318; several depositions;

depositions; an order dated the twenty-ninth of *June* last, to examine the defendants *Hardy* and *Wright* on behalf of the defendant *Burgin*; the said examination; and on full debate of the matter;

NORL  
against  
BURGIN.

THE COURT ordered the bill to be dismissed as against *R. Hardy* and *J. Wright*, with costs.

The bill as against  
the vicars dismissed  
with costs;

THE COURT further ordered the bill, so far as the same sought relief against the defendant *A. Burgin*, to be retained for a year, with liberty to the plaintiff, in the mean time, to try his right at law to the tithes demanded by him by the bill upon the statute 2. & 3. *Edw. 6. c. 13.* the defendant undertaking to admit on such trial the lease, dated the thirty-first day of *July* 1753, from *the Archbishop of York*, to the plaintiff of the rectory of *Kinalton*; and both parties consenting, that the exhibits now produced and read, viz. a copy from the consistory court of the *Archbishop of York* of the endowment of the vicarage of *Kinalton*, and an instrument intitled *Ordinatio Vicaria Colston Bassett*, dat. 4 *Calend. November* 1318, be likewise read as evidence at the said trial; the consideration of costs as between them, and further directions to be reserved till after the trial be had.

and as against  
*Burgin* retained  
for a year, and  
the plaintiff left  
at liberty to  
bring his action.

The plaintiff, in pursuance of the said decree, brought his action for tithes against the defendant; the defendant pleaded and prepared for trial; but the plaintiff did not proceed to trial before the time limited by the decree for retaining the bill expired.

The plaintiff  
brings the action,  
but neglects to  
try it within the  
year.

THE COURT therefore, on the application of the defendant, no counsel appearing for the plaintiff, ordered on the thirty-first of *January* 1771 the bill to be dismissed with costs.

The bill dis-  
missed.

PARKER, *Chief Baron.*  
SMYTHE, *Baron.*  
PERROTT, *Baron.*

# PICKERSGILL against SARGISON.

HILARY TERM  
10. GEO. 3.

*Yorkshire*, 24th *February* 1770.

THE bill stated, that the masters, fellows, and scholars of the college of the holy and undivided trinity, within the town and university of *Cambridge*, founded by *Henry the Eighth*, being improPRIATORS or owners of the prebend or parsonage of *Massam*, in the county of *York*, were entitled to all tithes, both great and small, and to all oblations, obventions, and other titheable matters and ecclesiastical dues arising therein, particularly to the tithes of wool and lambs; that they, by indenture

The improPRI-  
ator of *Massam*,  
in the county of  
*York*, is entitled  
to the tithes of  
wool and lambs  
arising on *Sig-  
worth Grange*, in  
the parish of  
*Kirby Malnord*.



PICKERSGILL  
against  
SARGISON.

See other causes,  
Hilary Term, 9.  
Geo. 2. Trinity  
Term, 11 Geo.  
2. Trinity Term,  
12. Geo. 2.

dated the twenty-first of *June* 1758, demised to *H. Hewgill*, clerk, all that their prebend or parsonage of *Massam*, with all the houses, lands, tenements, meadows, pastures, leafowes, tithes, oblations, fruits, profits, and commodities whatsoever, with all and singular the appurtenances thereto belonging, to hold the same (except as in the said indenture mentioned) to him, his executors, and assigns for twenty-one years; that the said *H. Hewgill* with *T. Midgeley*, by indenture dated the second of *August* 1764, did demise, &c. the same, with several hamlets, &c. in the rectory of *Kirby Malzard*, in the parish of *Massam*, to the plaintiff, as in the answer was fully stated; that the plaintiff, by virtue thereof, became entitled to the rectory of *Kirby Malzard*, with its appurtenances, and all other premises and titheable matters thereby demised, except as aforesaid; that the defendant had for many years past, and since the fifth of *April* 1764, occupied lands and tenements in *Sigsworth*, in the said rectory; that for several years before the fifth of *April* 1764, and regularly as the same arose and became due he had paid to the owners or impropiators of the said rectory, or their lessees or tithe-gatherers, all the tithes of wool and lambs, or a composition for the same in lieu thereof; but that although he had compounded with them for the tithes of wool and lambs for the year 1764, and had paid to them ten shillings and sixpence in lieu thereof, yet he had ever since wholly refused at the usual times of taking such tithes, either to set them out, or to make satisfaction for the same. The bill further charged, that for the two years following, the defendant had kept, fed, and depastured on the said lands, rams, ewes, and other sheep, which had yearly yeanned divers lambs; that he had also sheared from such sheep quantities of wool; that he had sold several sheep and lambs; and that the tithes of wool and lambs were due and payable at *Midsummer Day*. The bill therefore prayed, that the defendant might account for his several tithes of wool and lambs,

The defendant said, that all the lands and tenements occupied by him in *Sigsworth* were part of *Sigsworth Grange*, in *Fountain's Earth*, in *Hetherdale*, and in the parish of *Kirby Malzard*; that the premises had been immemorially, and then were, known by the name of *Sigsworth Grange*; that they were part of the possessions of the late abbey of *Fountains*, long before, and at the time of the dissolution thereof; that the said abbey was one of the greater abbeys dissolved by the 31. *Hen. 8.*; that the said abbey, and all the manors, rectories, lands, tenements, hereditaments, and possessions thereof, or thereto belonging, were, by the same statute, vested in *Henry the Eighth*, with all the exemptions, privileges, and advantages thereto belonging, in as full and ample manner, to all intents and purposes, as the abbot and convent of the said abbey had held and enjoyed the same; that all the lands, tenements, and premises, so occupied

PICKERSGILL  
*against*  
 SARGISON.

occupied by him had been immemorially, and at the time of the dissolution were, free and discharged, and held and enjoyed by the said abbot and convent of *Fountains* freed and discharged of and from the payment of all manner of tithes whatsoever; that, by virtue of the said statute, all the said lands and premises became and were exempt from, and free, and discharged of and from the payment of all tithes whatsoever. He therefore insisted, that the plaintiffs were not entitled to any tithes arising from the said lands, tenements, and premises, or any part thereof. He further said, that the lands were of the yearly value of sixty-one pounds; that his predecessors had paid the composition for the sake of peace; and that he had in like manner compounded for the said tithes. He set forth the number of sheep and lambs he had fed in the said two years, the quantity of wool, and the values thereof, but still insisted, that the lands were exempt from payment of tithe wool and lambs.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel, and reading a lease, dated the twenty-first of *June* 1758, from the master, fellows, &c. to *H. Hewgill*, clerk; a declaration of trust, dated the seventh of *March* 1763, from *H. Hewgill* to *J. Midgley*; a lease of the tithes in question from them to the plaintiffs for fourteen years, dated the seventh of *August* 1764; a grant or charter of confirmation made and granted to the abbot and convent of *Fountains Abbey*, by *King Edward the Third*, and dated the twentieth of *June* in the twenty-third of his reign; a record from the augmentation office, purporting to be an account of *Sigsworth Grange*, made by *Sir Richard Grosbarn, Knight*, from *Michaelmas* in the thirty-second, to *Michaelmas* in the thirty-third year of *Henry the Eighth*; also from the said office a survey and valuation of the possessions of *Fountain's Abbey* made by *Leonard Beckwith* and *H. Fuller*, by virtue of letters missive from the right honourable *Sir Thomas Cromwell*, knight, *Lord Cromwell* and lord privy seal, dated the ninth of *September* (without any year); several depositions in the cause; several entries from an ancient book belonging to the former vicars of the said parish of *Kirby Malzard*; and on full debate;

THE COURT ordered the deputy remembrancer to take an account of what was due to the plaintiffs from the defendant for the tithes of wool and lambs which had arisen on *Sigsworth Grange*, for the years 1765 and 1766, with costs; and also of what was due for the said tithes of wool and lambs for the several years subsequent to 1766; and the defendant to pay what should be reported due.

PARKER, *Chief Baron.* |  
 ADAMS, *Baron.*  
 PERROTT, *Baron.*

IBBETSON,

HILARY TERM  
10. GEO. 3.

IBBETSON, D. D. *against* BURT.

*Hertfordshire, 26th February 1770.*

The rector of  
*Busbey, in Hert-*  
*fordshire, claims*  
the tithes of the  
parish in kind.

THE rector of *Busbey*, in the county of *Hertford*, claimed the tithes of the parish in kind; and stated, that the defendant had, for several years, occupied a farm, an orchard, and a garden, in the said parish; that in the year 1766, beginning at *Michaelmas*, he had apples and other fruit in his orchard, which he had gathered and carried away without setting out the tithes thereof, or making any satisfaction for the same; that he had on his farm in the said years clover and meadow grass; that he had tithed some part thereof in swarths, and had made the other part into hay; that he neglected to set out the tithe of the hay made, when the weather was fine, and only set it out in grass cocks, when the weather was rainy; that he refused to permit the plaintiff's servants to make the said tithe grass into hay; that he often turned the said tithe grass cocks, and threw them together with the other nine parts; and that by so doing, when he raked together the said nine parts, when made into hay, the plaintiff's tithe grass was very much damaged, it not being covered with the defendant's hay, but lying several days together in grass cocks, for want of his allowing the plaintiff's servant sufficient room to spread and turn them; that, on the servants applying to him for more room, he refused to grant it, unless the said plaintiff would carry the said cocks to a further part of the field; and that thereby great part of the said tithe grass was lost. The bill also charged, that the defendant often lessened the number of the grass cocks; that his, the plaintiff's, agents had frequently counted the same in several fields, as they were tithed, and made a return of the deficiency; and that it appeared, that the plaintiff had sustained a great loss, besides the damage received by him in the quality of the tithe grass, by having been deprived of the opportunity of making it into hay while the weather was favourable. The bill also charged the defendant with having practised the same kind of fraud and injury in respect of his lattermath. The bill further charged, that he had in the said year a number of lambs and pigs; a quantity of beans which he had mowed and scattered on the lands; barren and unprofitable cattle which he had depastured; horses which he had agisted for hire; divers roots, herbs, and fruit; trees under twenty years growth, which he had lopped and topped; underwood which he had cut; a large flock of sheep, which had lambs; of all which he had refused to set out the tithes in kind, or to make any satisfaction for; except to the amount of four pounds, seven shillings, and twopence, which the defendant had tendered, but which was greatly under the value of the said tithes. The bill therefore prayed, that the defendant might be decreed to pay the value thereof.

The



The defendant admitted, that the plaintiff was rector of the parish, and, as such, was entitled to tithes in kind; and said, that he occupied a large farm in the parish; that in the year 1765, he had paid the plaintiff thirty-eight pounds for a composition for all his tithes for that year; but that in the year 1766, he had refused to pay him the same, as it much exceeded the yearly value of all his tithes; and insisted, that he should take his tithes in kind. And he set forth the several species, quantities, and values of the grain, &c. so sown on his farm, and further said, that after he had mowed the clover and meadow grafs upon the lands, he gave the plaintiff due notice to come and tithe the same; that the plaintiff then proposed to have the clover and meadow grafs tithed in swarths, which he the defendant agreed to, although it was inconvenient to him to make them into hay; but that he severed the nine parts from the said tithe; and he denied, that he had ever refused the plaintiff room sufficient to make his tithe hay, as alledged in the bill; and averred that the whole tithe was carried away by him. He further said, that afterwards, when he had mowed the remainder of his lands, the plaintiff declared that he would not take his tithes in the swarth, unless the defendant suffered him to take a number of swarths altogether in some part of the closes; that he refused to permit him so to do; that thereupon the plaintiff then insisted upon the said hay being made into cocks, and the tenth to be marked and set out as his tithe, which the defendant then complied with, and told him, that his tithing man had tithed them unequally, but that to preserve peace he would submit to such injustice. He admitted, that the tithe grafs had been injured by the rain, but said, that it was occasioned by the misconduct of the plaintiff's own servants; and that high winds had blended the heaps together, so that it became necessary to have the same re-tithed, which the plaintiff refused to permit; that as he might have sustained some loss and deficiency, he tendered him one pound, four shillings, in satisfaction for the same, which he had refused to accept. He further said, that in 1766, he cut seven acres of lattermath, which rotted and spoiled on the ground, and that he made dung thereof. He set forth his titheable matters, and enumerated the tithes which the plaintiff had taken away; and stated the several tenders he had made for the rest, to the amount of about four pounds, seven shillings, and twopence, for the tithe of the said grafs cocks, and of lambs, pigs, eggs, *Easter* offerings, and tithe agistment, and which he offered to pay. He also said, that on the twenty-first day of *January* last, before the plaintiff had filed his bill, he tendered the sum of five guineas to him, in full satisfaction of all his titheable matters, which he had refused to accept; and that he was then and always had been ready to pay the same; and he insisted on the advantage of such tender, as if he had pleaded the same. He denied, that he had subtracted any

ISBETSON,  
against  
BURT.

The defendant describes the manner in which he set out his tithes; and said, that the rector had refused to take the same away; and tenders him 5l. 5s.

IBBETSON  
against  
BURT.

other of his tithes, except as aforesaid, or that he had refused to account or give reasonable satisfaction to the plaintiff for the same.

The plaintiffs replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel, and reading several depositions taken in the cause; and on full debate of the matter;

The deputy ordered to take the account.

THE COURT ordered the deputy remembrancer to take an account of what was due from the defendant to the plaintiff for all the titheable matters and things demanded by the bill; and to enquire into and state in his report, whether the sum of five guineas, which the defendant had tendered to the plaintiff by his answer, was the full amount of the value of the said tithes, at that time, due from him to the plaintiff, &c.

The deputy reports that only 5l. 1s. 2d. are due to the plaintiff.

The deputy made his report, dated the twenty-third of April last, to which the plaintiff took exceptions; and on the twenty-eighth of June 1771, upon opening the said decree, report, and exceptions, by the plaintiff's counsel; and reading the same, and reading the deposition of *H. Claxton* to the third instant, and hearing counsel for the defendant; and reading the bill and the deposition of *J. Rolf* to the third, sixth, and seventh interrogatories, and *M. Fowler* to the third, and *H. George* to the third and fifth interrogatories; and the said *Claxton's* deposition taken on behalf of plaintiff, and upon full debate of the matter;

The plaintiff decreed to pay the defendant his costs, deducting the 5l. 5s.

THE COURT ordered the exceptions to be over-ruled, the report to be ratified and confirmed, the defendant to pay the five pounds, and five shillings so tendered, the full value of the said tithes being only five pounds, one shilling, and twopence, and the plaintiff to pay the defendant his costs of this suit.

EASTER TERM  
10. GEO. 3.

JENKINS against PYME,  
*Devonshire, 22d May 1770.*

The vicar of *Uppottery*, in *Devonshire*, is entitled to the tithes of hay, and to all other tithes, except of corn and grain, arising in *Teller's Farm*, *Moorbays's Farm*, and on the other ancient farms in the said parish.

THE bill stated, that the plaintiff was collated and inducted to the vicarage of *Uppottery*, in the county of *Devon*, in *January 1762*, and entitled by endowment, prescription, or usage to the tithe of hay; to all manner of tithes arising therein, except the tithes of corn; to all offerings, oblations, obventions, and dues belonging to the said vicarage; and to such other duties and profits as had been usually taken and enjoyed by any former vicar thereof; that during three years last past, the defendants had been owners and occupiers of several farms and lands, as mentioned in the bill, and had yearly mowed grass therefrom, and made the same into hay; that they had also fed and depastured thereon divers oxen, bullocks, horses, cows, heifers, runts, and other dry and unprofitable cattle; that they had

JENKINS  
against  
PYME.

had also kept several sheep and cows which had calves, lambs, milk, and wool; that they had also apples, pears, plumbs, gooseberries, currants, and other fruits; herbs, roots, and garden-stuff; that they had kept several sows, geese, turkeys, ducks, and hens; that they had several hives and swarms of bees; that they had also several pieces of ground sown with flax seed; and that they had divers other titheable matters, the tithes of which amounted to several considerable sums of money, and of right belonged to the plaintiff; that soon after his collation to the said vicarage, he accepted from the defendants certain payments by composition, in satisfaction of their tithes; that the said compositions had been agreed to and accepted by his predecessor; that he continued to receive the same to the twenty-fifth day of *December* 1762; that he had, before that time, discovered that such compositions were far short of the true yearly value of the tithes so belonging to him; that he gave to each of them *six months notice* for determining such compositions; that the said notice expired on the twenty-sixth day of *December* 1762; that the said defendants were by such notice required to set out and pay those tithes in kind, which had become due from them respectively from the said twenty-fifth day of *December* 1762; but that they had not, since their several compositions had been so determined, ever set out any tithes of their hay, or of any other of the titheable matters aforesaid, or come to any account with or made him any satisfaction for the same, or for any of the dues, profits, and duties belonging to him as vicar. The bill then further charged, that the said vicarage was originally endowed many years ago, beyond time of memory, with the tithes of hay and the small tithes arising within the said parish; that the tithes of hay, and all small tithes, or some payments or compositions in lieu thereof, had immemorially been paid to the vicar of the parish for the time being, and had never been, within the time of memory, rendered or paid to the dean and chapter of *Exeter*, to whom the impropriate rectory of the said parish belonged; that the dean and chapter of *Exeter* had never set up any claim against the vicars thereof for the tithe of hay; that they had never demanded of the occupiers to set out the same in kind; but had for a great number of years usually demised the tithes belonging to them, as rectors, by the description of their tithes of corn and grain; that notwithstanding the said payments, made at the time the plaintiff became vicar of the parish, were in satisfaction for the said vicarial tithes, yet that such payments had not been for time immemorial, and did not derive their commencement from *compositions real*, but from temporary agreements; that in the year 1320, a partial endowment of the vicarage was made; and that it thereby appeared, that the vicar of the parish was endowed, amongst other things, with the small tithes. The bill further stated, that by the return of  
the



JERKINS  
against  
PYME.

the value of the vicarage in the reign of *Henry the Eighth*, it appeared that the tithe of wool, lambs, and calves, were due; and that no mention was therein made of any *modus* whatsoever. The bill also stated, the several agreements made in the year 1721; that the several compositions mentioned in them had from that time been paid agreeable thereto; and that the receipts given for the same were given as for compositions and not as for *moduses*. The bill therefore prayed, that the defendants might be severally compelled to account for all such tithes of hay, small tithes in kind, and other dues, duties, and profits, and pay the plaintiff for the same.

The defendant *Pyme*, and others, by their joint answer admitted, that the plaintiff was vicar of the parish, and entitled to such *moduses*, ancient compositions, customary rates, yearly payments, and sums of money as had been usually paid by the several occupiers of estates therein, in lieu of the tithes of hay, and all other vicarial tithes, offerings, and ecclesiastical dues yearly arising therein; but they denied, that, to their knowledge or belief, the plaintiff was entitled to any tithes in kind, or to *Easter* offerings.

The defendant *Pyme* admitted, that she then was, and ever since the plaintiff's collation, had been owner and occupier of *Toller's Farm* or *Cook's Farm*; that the said ancient farm had, for time immemorial, consisted of several acres of land; that in the said years she had mowed several acres of grass, and made the same into hay; and she set forth the quantities and values; and said, that, for time immemorial, there had been paid yearly for the said farm the sum of one pound, ten shillings, and no more, to the vicar, by quarterly or half yearly payments, or as soon after as demanded, as a *modus* or a composition in lieu of tithe hay, and all other titheable matters and things, of what nature or kind soever (the tithes of corn and grain only excepted), and *Easter* offerings yearly arising on the said farm.

The defendant *S. Clode* admitted, that he occupied *Moorbay's*, otherwise *Bennet's Hay's Farm*, and set up a *modus* of one pound, two shillings, payable for the same as aforesaid.

The other defendants set forth the farms, lands, and tenements they severally occupied, and the quantities and values of their titheable matters and things, particularly of hay, and the several *moduses* that had been for time immemorial paid for the same.

All the defendants denied, that any variation had, to their knowledge, ever been made in the respective *moduses* mentioned in their answers; or that any other sum had been paid by any former or subsequent occupier of the said messuages or tenements

JENKINS  
against  
PYME.

ments and lands to any former vicar, in lieu of the said tithes; or that any tithe in kind of hay, or other titheable matter, except of corn and grain, had ever, within the memory of man, been set forth in kind on any of the lands belonging to any of the messuages or tenements; or that any sum of money had ever been paid to the vicar of the said parish for *Easter* offerings due from persons inhabiting the same. They also denied, that the several *modus*es had their commencements, or became due from particular agreements only with them; or that the *quantum* of them was settled by the assessments for the relief of the poor or poor's rate, at sixpence in the pound, or any other sum, of the yearly value at which their farms were respectively charged in such rate or assessment; or that such *modus*es were determinable at the option of the plaintiff or defendants; or that they had been paid by them, or the former occupiers of the said farms, or received by the plaintiff, or his predecessors, as compositions due by particular agreement only; or that they were expressed as such in the receipts, given them respectively by the plaintiff or his predecessors. They admitted, that they had always refused to set out any sort of tithes in kind, or to increase their customary *modus*es. They denied, that they had received any notice in writing from the plaintiff to determine their said compositions, or to render tithes in kind; and said, that he had received the same down to 1762; and that they were ready to pay the same. They also said, that all the lands within the parish belonged to, and were part of the ancient messuages and farms therein; that all the commons and waste grounds within the parish, with the cottages thereon, belonged to and were appurtenant to the said ancient messuages or tenements, farms, and lands; and that the herbage and the right of depasturing cattle and sheep thereon solely belonged to the said ancient messuages and farms. They also said, that they believed that the several *modus*es were due and payable to the vicar from the occupiers of the several ancient messuages and lands therein, and amounted, together, with the church yard and glebe belonging thereto, to the yearly value of sixty pounds. They further stated, that the dean and chapter of *Exeter* were the improper rectors of the rectory or improper parsonage of *Uppottery*; and as such were entitled to the tithes of all corn and grain yearly arising therein; that the said dean and chapter, in obedience to certain letters of *Charles the Second* dated the first of *June*, in the twelfth year of his reign, augmented the said vicarage with the yearly sum of twenty pounds, payable out of the rents of the rectory; and that by act of parliament passed in the twenty-ninth year of his reign, every augmentation, of what nature soever agreed to be made payable since the said first of *June*, should thereafter be granted or made payable to any vicar or curate, by any archbishop, &c. &c. out of any rectory  
improper

JENKINS  
against  
PYNE.

impropriate of tithes to them belonging, should for ever thereafter continue, and the said vicars and curates be thereby adjudged to be in actual possession thereof; and they insisted, that the said annual stipend had been and then was paid by the said impropiators, or their tenants to the vicars of the said parish, out of the rents and profits of the said rectory; and that in case, at the time of the said augmentation, tithes of hay and all small tithes had been payable in kind to the vicar of the parish, that the same, together with the *Easter* offerings, would have amounted yearly to the sum of two hundred pounds. They therefore submitted that the granting such augmentation by the said dean and chapter, &c. and the acceptance thereof by the then and future vicars of the parish, was a virtual acknowledgment that the said *modus*es had existed from time beyond memory, and consequently that such augmentation would not have been made if it had been in the power of the vicars to have evacuated or altered the same *modus*es, or to demand *Easter* offerings, and tithes in kind of hay and all small tithes.

The dean and chapter of *Exeter* insisted, that they had for many years been owners of the impropriate rectory of the parish of *Uppottery*, and had always enjoyed the benefit of the tithes of corn and grain within the said parish, and had demised to their tenants such tithes by the description "of all" that their tithing garb and sanctuary ground of the said parish, with the appurtenances, to the said dean and chapter "appertaining," but no other kind of tithes; and that they had not reserved upon such demises any species of tithes to themselves. They admitted, that the plaintiff was vicar of the parish; and denied that they claimed the tithes of hay or small tithes arising therein, or any part thereof; but that whether the defendants, the parishioners, ought to account with the plaintiff for the said tithes in kind, or otherwise, they did not know; and they denied combination, &c.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides (except for the dean and chapter); and on hearing of counsel for several days, and reading an endowment of the vicarage of *Uppottery*, dated on the *Thursday* next before the feast of *Saint Matthew* 1320; an order to prove exhibits; a record from the first fruits office of the valuation of the ecclesiastical livings, taken by special commission issued for that purpose, in the twenty-sixth year of *Henry the Eighth*, so far as the same was relative to the said vicarage; the institution of *Robert Slowman*, clerk, to the said vicarage, dated the nineteenth of *May* 1621; the institution also of *James Bosington*, clerk, to the said vicarage, dated the seventh of *June* 1667; and the counsel for the plaintiff offering to read a libel instituted by the said *R. Slowman*, in the spiritual court of the diocese of *Exeter*, on the fifteenth of *November* 1622, against  
John



*John Brown*, an occupier of lands within the said parish, for subtraction of tithes. and the sentence pronounced on the said libel; and the counsel for the defendants objecting thereto, the answer to the said libel not being produced; and the Court allowing the said objection; and on reading a libel instituted by the said *R. Slowman* against *Frowde* for subtraction of tithes; the answer to the said libel; and the sentence thereon, dated the seventh of *March* 1622; another libel instituted by him on the twenty-ninth of *July* 1627 against the said *Frowde* for subtraction of tithes; the answer to the said libel; the sentence thereon; several entries in 1721, signed by several people in a book marked letter C, belonging to *Joseph Chilcott* formerly vicar of *Uppottery*; several proofs taken in the cause; several receipts referred to by the answers; other proofs in the cause; a lease from the dean and chapter of the cathedral church of *Saint Peter*, in *Exeter*, dated the twenty seventh of *October*, in the twelfth year of *Charles the Second*, to *Eustace Budgell*, of the tithing garb and sanctuary ground of *Uppottery*; two other leases, dated the twenty-sixth of *June*, &c. in the thirty-third year of the said king to the said *Budgell's* widow of the said tithe garb, &c.; and on full debate of the matter;

JENKINS  
against  
PYNE.

THE COURT ordered the deputy remembrancer to take an account of what was due to the plaintiff from the defendant *Pyne* and others respectively for the value of the tithe of hay, and the several other titheable matters and things demanded by the bill which had yearly arisen, renewed, and increased since the twenty-fifth of *December* 1762 on the farms and lands in their respective occupations in the said parish of *Uppottery*; and also for *Easter offerings* for themselves and families during the time aforesaid; that the defendants do pay to the plaintiff his costs of this suit to be taxed; that the bill be dismissed as against the dean and chapter, &c. with costs to be taxed; and that further directions be reserved till after the report.

PARKER, *Chief Baron*.

ADAMS, *Baron*.

PERROTT, *Baron*.

WILSON, D. D. against MASON.

*Kent*, 28th May 1770.

EASTER TERM,  
10. GEO. 3.

THE bill stated, that the plaintiff, about the thirtieth of *August* 1763, was instituted and inducted vicar of *Deptford*, otherwise *Saint Nicholas Deptford*, in the county of *Kent*, and had thereby become entitled to all vicarial tithes arising therein, particularly to the tithe of the clear profits arising from any mills; The vicar of *Deptford*, in *Kent*, demands the tithes of a water mill and a windmill, at which the defendants, who were distillers, ground malt for the purpose of distillation, and barley, rye, pease, and other grain to feed hogs with;

that

WILSON  
against  
MASON.

that the water  
mill was an an-  
cient mill, but  
had paid tithes  
for thirteen  
years ;

that it ought to  
be presumed,  
that it had al-  
ways been tith-  
able ;

and that it had  
been so altered  
as to destroy  
any privilege ar-  
ising from its  
antiquity.

The defendants  
say, they are dis-  
tillers ;

that the defendants being *distillers* had, during the time the plaintiff had been vicar of the parish, occupied two mills, one of which was a *water mill*, and the other a *windmill* ; that the water mill was a very ancient one, and had been formerly used as a lead mill, but had since been converted into a corn mill to grind corn ; that the windmill had been erected about thirty-two years ; that at both the said mills the defendants ground corn into meal for the purpose of distillation ; that they also ground therein barley, rye, pease, and other grain to feed hogs for sale ; that the said hogs were fed out of the said parish ; and that the plaintiff had no profit therefrom, but of which the defendants made considerable profit ; that he had frequently applied to them for payment of the tithes of the said mills, or some reasonable satisfaction for the same ; but that they had refused so to do, under pretention that the water mill was an ancient mill, and therefore exempt from the payment of tithes ; and that no tithe had ever been paid for the same, except from the year 1704 to 1727 ; that the vicar for the time being had, during the said interval, made an entry in his book of one pound, ten shillings, *per annum*, for the tithe of the said mill ; and that, during that period, it had been worked as a lead mill : but the plaintiff contended, that as the account of the payment of tithe for the said mill from 1704 to 1727 was, from the very beginning of the book to the day of the then vicar's death, and as the other books prior to such book were lost, it was no evidence that no tithes for the said water-mill had been paid before the year 1704. He further said, that the construction of the said water mill had been greatly altered within twenty years then last past ; and that notwithstanding the said water mill might have been formerly an ancient corn mill, yet as the same was afterwards converted into a lead mill, such conversion absolutely destroyed any prescriptive right the defendants might pretend to claim of the said mill being discharged from the payment of tithes : and he expressly charged, that as the defendants had made great profits of the said mills in their way of trade, he was justly entitled to a tenth of the clear profits arising therefrom. The bill therefore prayed, that the defendants might come to a fair account with him for the arrears of tithes then due and owing for the said mills ; and that they might pay such arrears, or some reasonable composition or satisfaction for the same, and pay the said tithes for the future as the same should become due, so long as he should continue vicar of the parish.

The defendant *Mason* admitted, that the plaintiff was vicar, and entitled to all vicarial tithes arising in the parish ; but whether to the tithe of the clear profits arising from any mills therein he knew not ; but he said, that there were some mills in the parish, to the tithes of which he was not entitled.

He

He also admitted, that the defendant *Bryant* was his partner, and that they had, during the time the plaintiff had been vicar, occupied two mills therein, one a water mill and the other a windmill: and he said, that the water mill, was a very ancient one, and had been used as a corn mill from time immemorial before the same, or any part thereof, was converted into a lead mill in the year 1690, at which time only part thereof was used as a lead mill, and that the other part, from thence down to the present time, continued to be used as a corn mill only; and that he had great reason to believe, that the part of the water mill which was so used as a lead mill was only continued to be so used down to the year 1735; but believed, that it did not appear by the books of account of any of the vicars of the parish, either precedent to 1704 or subsequent to 1727, that any tithe or composition for tithes had been paid for the said water mill as a lead mill, nor that any tithes or composition for tithes whatsoever had been at any time paid, either for the said water mill as a corn mill or the said wind mill, or that any thing was due to the plaintiff for tithes on account of the said mills. He admitted, that the wind mill was erected by his father, and that they had ground corn at both the said mills into meal for the purpose of distillation from the time the plaintiff had been vicar; and that they continued so to do. They denied, that they ground barley, rye, pease, and other grain at both the said mills to feed hogs with for sale; but said, that they ground such sorts of grain at the water mill only; that the hogs were fed in the parish of *Greenwich*; that they never used their mills than as aforesaid; that they made no other profits or gains thereby; and that they believed the plaintiff was not entitled to the tithes thereof; but they submitted to the judgment of the court. They admitted, that the plaintiff had applied to them for payment of tithes of the said two mills; but said, that he did not demand any particular sum of money for such tithes, or specify for what particular thing he made such demand; and that they refused, for the reasons aforesaid, to pay him any thing on account of such tithes: and he submitted to the court, that in regard, by the plaintiff's own shewing, it did not appear by the books of account of the profits of the vicarage, then in his custody, that any tithe had been paid for the water mill before the year 1704, and as he did not produce the other books prior, under a pretence that the same were lost, it was an evidence, that no tithes whatsoever for the said water mill were paid before 1704, and also by reason of non-payment of tithes of the said mill ever since 1727, that it ought to be presumed, that the vicars of the parish, ever since 1727, had been so sensible that no tithes for the mill were due, that they had forbore to demand the same. He denied, that the construction of the water mill had been at all altered within

twenty

WILSON  
against  
MASON.

that they occupied the two mills;

that the water mill was an ancient corn mill, and about eighty years had been used to grind both lead and corn;

that the wind-mill had been newly-erected, and was used to grind meal for hogs, which were fed in the parish of *Greenwich*;

that no tithes had ever been paid for the water-mill before 1704;

that the construction of the water mill had not been altered.



WILSON  
against  
MASON.

twenty years ; but admitted, that several granaries and other buildings had been erected ; and submitted to the court, whether the mill ought to pay tithes to the vicar : and he set forth the particular species and quantity of grain which had been ground there ; and submitted, whether they ought to discover the number of hogs fed, and the profits which arose therefrom, or of their distillation ; and therefore did demur and object to such questions.

The defendant *Bryant*, by his guardian, put in the like answer.

The evidence read ; and the fact that the defendants did not reside in *Deptford* admitted.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on both sides ; and upon hearing counsel on both sides ; and reading the proofs taken in the cause ; and a book containing entries by *Dean Stanhope*, viz. of money received for *Hol's Lead Mill* ; likewise of *William Fox* for *Gumman's Lead Mill* ; and it being admitted, on the behalf of the plaintiff, that at the time for which the claim of tithe was made, and at the filing of the bill, the defendant lived in the parish of *Greenwich*, and not where the mills were situate ; and reading further proofs taken in the cause ; the answer ; and on debate of the matter ;

The cause heard.

THE COURT ordered the cause to stand over for the opinion of the court ; and the cause standing over accordingly until this day ;

The bill dismissed without costs.

THE COURT did thereupon deliver their opinion, and ordered and adjudged, that the bill be dismissed out of this court, but without costs.

T. PARKER.  
S. S. SMYTHE.  
RICH. ADAMS.  
GEO. FERROTT.

TRIN. TERM,  
10. GEO. 3.

BOOTH against WRIGHT.

*Lancashire*, 18th June 1770.

The landholders of *Ashton under Line*, in *Lancashire*, pay certain *modus*es in lieu of tithes.

THE rector of *Ashton under Line*, in the county of *Lancaster*, claimed the tithes of all corn, grain, hay, potatoes, apples, eggs, milk, and all other titheable matters and things which had arisen therein, and also *Easter* offerings from *Michaelmas* 1758 in kind ; and stating, that there was no *modus* of one penny yearly in lieu of tithe hay of any farm and lands in the said parish, or any other *modus*es therein, prayed, that the defendants might account for the value of the tithe of the hay, milk, potatoes, and apples, which they respectively had on their several lands ; and that the plaintiff's right to such tithes might be established.

The

BOOTH  
against  
WRIGHT.

The defendants admitted, that the plaintiff was rector, and entitled to the tithes of corn, grain, pigs, geese, eggs, potatoes, apples, and *Easter* offerings, except such apples as grew in ancient gardens; and except with respect to certain tenements and lands for which certain *modus*es were due.

The defendant *Wright* said, that he was owner of an ancient tenement called *Wood Park*; that about one third thereof had been in his occupation ever since *Michaelmas Day* 1758; that the other two-thirds had been let to under-tenants: and he admitted, that the plaintiff was entitled to the tithes of all corn and grain arising thereon.

The defendant *G. Kelsall* said, that he was owner of *Dennis's Tenement*; and that he had occupied part thereof ever since *Michaelmas* 1758.

The defendants *Booth* and *Kenworthy* said, that they occupied, as tenants to the defendant *Kelsall*, the other parts of *Dennis's Tenement*: and they set forth the quantities they so held.

All the defendants said, that the tithes of hay, milk, potatoes, and apples growing in gardens in the said parish, were not payable in kind; but that there had been immemorially, and then was, payable, at *Easter* yearly, by the occupiers of the *Wood Park* and *Dennis's Tenement*, the several sums of one penny for and in respect of each of the said tenements as ancient *modus*es in lieu of the tithe of all grass mowed for hay and all hay yearly arising therefrom respectively; AND ALSO one penny, payable as aforesaid by every householder, in lieu of all tithes payable in respect of such house and garden, or either of them; AND ALSO for every master or mistress of a family, for himself and herself, and the members of his or her family, for and as oblations or offerings, viz. for every man above the age of twenty-one, whether bachelor, or husband, or widower, twopence; for every married woman, twopence; for every other person of his or her family, whether child or servant, of above sixteen years of age, one halfpenny, at *Easter*; that they were the better satisfied that such payments were made as *Easter* offerings, because that whenever the master or mistress of a family died, an abatement of twopence, and no more, was, and immemorially had been, made out of the usual payment by the rector; that there was also a *modus* payable at *Easter* of one penny for every barren cow, and also for every cow not having a calf dropped within the said parish belonging to such occupier, fed, depastured, or milked within the said parish, in lieu of tithe herbage and tithe milk of every such barren cow; and that no other tithe was payable, or had been ever paid, for the milk of any such barren cow, or of any such other cow as aforesaid, so fed, depastured, or milked within the said parish; AND ALSO a

VOL. III.

U

*modus*

Booth  
against  
WRIGHT.

*modus* of one penny, payable as aforesaid, for every cow that had a calf dropped within the said parish, such cow belonging to such occupier, and fed and depastured within the said parish, in lieu of the tithe milk of such cow, and of one halfpenny for each calf so dropped, in lieu of the tithe of such calf.

The defendant *Kenworthy* set up the like *modus* of one penny for tithe hay off *Hurst's Tenement*, and also for *Cooke's*, formerly called *Andrew's Ancient Tenement*.

And all the defendants said, that they were ready and willing to make the plaintiff a reasonable satisfaction for his demands in respect to the tithe eggs, and of such apples and potatoes as were not the produce of their said gardens; and also to pay him the customary payments and *modus*es aforesaid; and they offered to pay the same by their answer.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides; and reading the depositions of several witnesses; the copy of a commission, dated the twenty-ninth of *March* 1650, and the inquisition taken under it, dated the eighteenth day of *July* following; and on full debate of the matter;

THE COURT ordered a trial at law to try the five following issues, *viz.*

FIRST and SECOND, "Whether, from the time whereof the memory of man is not to the contrary, there hath been, and is payable, at the feast of *Easter* yearly, or so soon after as demanded, to the rector of the rectory and parish church of *Ashton under Line*, in the county of *Lancaster*, or his farmer or lessee of the tithes thereof for the time being, by the several and respective occupiers of each of the tenements or farms and lands in the pleadings of this cause mentioned, called *the Wood Park* and *Dennis's Tenement* respectively, the several sums of one penny for and in respect of each of the said two tenements, and the lands thereunto respectively belonging, as ancient *modus*es and customary payments for and in lieu of the tithe of all grass mowed for hay yearly arising, growing, or renewing upon and from each of the said two tenements respectively."

THIRDLY, "Whether, from the time whereof the memory of man is not to the contrary, there hath always been an ancient *modus* or customary payment within the said parish, by every householder therein, at *Easter* yearly, or so soon after as demanded, due and payable to the said rector, his farmer or lessee for the time being, of the sum of one penny, for and in lieu of all tithes payable in respect of the house occupied by every such householder within the said parish, and of every garden belonging thereto."

FOURTHLY,



BOSTON  
against  
WRIGHT.

FOURTHLY, "Whether, from the time whereof the memory of man is not to the contrary, there hath always been an ancient *modus* or customary payment within the said parish by every occupier of lands therein, at *Easter* yearly, or as soon after as demanded, due and payable to the said rector, or his farmer or lessee for the time being, the sum of one penny for every barren cow; and also for every cow not having a calf dropped within the said parish belonging to such occupier, fed, depastured, or milked within the said parish, in lieu of tithe herbage and tithe milk of every such barren cow."

FIFTHLY, "Whether, from the like time whereof the memory of man is not to the contrary, there hath always been an ancient *modus* or customary payment within the said parish, by every occupier of land therein, at *Easter* yearly, or so soon after as demanded, due and payable to the said rector, or his farmer or lessee for the time being, of one penny for every cow that hath a calf dropped within the said parish, such cow belonging to such occupier, and being fed and depastured within the said parish, in lieu of the tithe of the milk of such cow, and of one halfpenny for each and every calf so dropped, for and in lieu of the tithe of such calf."

The defendants in equity to be plaintiffs at law, with the usual directions and consideration of costs, and all further directions as shall be necessary to be given touching the premises to be reserved till after the trial shall be had.

The plaintiff, being dissatisfied with the said decretal order, did, in *Trinity Term*, in the eleventh year of his present majesty's reign, exhibit his petition in this court, praying, that the cause might be reheard, alledging therein, as the reason for such application, that on the evidence given on both sides in this cause, no such contrariety of evidence appeared as to induce the court to direct such issues to be tried; and by an order, dated the second of *July* last, the cause was ordered to be reheard upon the usual deposit, which was accordingly made.

Now, on the fourteenth of *December* 1721, upon hearing counsel on both sides; and upon reading several depositions; and on full debate thereon had;

THE COURT ordered the said decretal order to be affirmed; the deposit of ten pounds to be paid to the defendants or their clerk in court; and the trial at law be had at the next *Lent* assizes to be held in and for the county of *Lancaster*.

The issues being settled by the deputy remembrancer, the cause was accordingly tried, without any defence being made therein on behalf of the plaintiff, and a verdict thereon was given for the said defendants, although this suit, before such trials, was become abated by the death of the defendant *Mary Kelsall*.

BOOTH  
against  
WRIGHT.

*Kelfall.* It was therefore, on the sixth of *May* 1772, prayed, that the said verdict might be set aside; and on the twenty-third of *May* 1772, the Court ordered the rule granted the sixth day of *May*, calling on the defendant to shew cause why the verdict should not be set aside, to be discharged with costs in respect thereof.

TRIN. TERM,  
10. GEO. 3.

GREEN against BRIGGS.

*Kent*, 28th *June* 1770.

The custom of the parish of *Orpington*, in *Kent*, is to set out the tithes of wheat, tares, and other grain, in shocks, and not in sheaves.

THE bill stated, that the plaintiff then was, and from the twenty-fifth of *March* 1767 had been, the farmer and occupier of the rectory of the parish of *Orpington*, in the county of *Kent*, and was entitled to the great tithes growing therein; that by an ancient custom, immemorially used and observed within the parish, every occupier of lands therein, whereon were sown wheat, tares, or other grain, ought to set up or put the same, when respectively cut, in shocks, cops, or hoyles of equal size, as near as might be, in and upon the several closes or pieces of lands from whence such wheat, tares, or other grain, were so cut or reaped, and then to set out every tenth shock, cop, and hoyle, for and as the tithe thereof, before the nine shocks, cops, or hoyles respectively, or any of them, were carried away by the occupiers of such lands; that the owner, farmer, or occupier of the said rectory and tithes have had, taken, and enjoyed, and of right ought to have, take, and enjoy, every tenth shock, cop, or hoyle, respectively so set out; that the defendant had, for several years past, occupied lands within the said parish, and had thereon crops of wheat, tares, and other grain; that, in the year 1768, he had occupied *Green Lane Field*, *Pickenden's*, and *Acre Field*, from whence he had reaped and cut wheat and tares, to the tithes of which crops the plaintiff insisted she was entitled, and had in a friendly manner demanded the same conformable to the said custom; but that the defendant, instead of complying therewith, had put the said wheat when cut into shocks of eight, nine, ten, eleven, and twelve sheaves placed and set up close together as the same ought to have been done before the tithing thereof, which he did in order to overturn the said custom, pretending that there was no such custom, and that he set out his tithe wheat in single sheaves. The bill then charged, that if any such custom of tithing of wheat by the sheaf should prevail, it would be very prejudicial to the plaintiff and to the future owners of the said tithes, because the tithes set out by the single sheaf would soon be spoiled before the same could be carried away; whereas if set out in shocks or cops, the tithe would be preserved much longer than if set out by the single sheaf. The bill also charged, that the said defendant had set out his tithes in an unfair manner, and that he had taken

away

aw  
sh  
sh  
b  
ha  
so  
tha  
of  
spe  
T  
had  
sinc  
tithe  
the  
whe  
occu  
tare  
tithe  
tom  
or th  
of w  
as st  
he  
in w  
plain  
T  
neste  
on b  
on d  
T  
accou  
the c  
to sta  
to th  
as rel  
TH  
A  
dues,  
sheep, c  
Day 176

away his tithes untithed, and had declared that the plaintiff should take what was left of the tithe as he had set them out, or should have none at all: that the crop of tares was carried away before the tithes were properly set out; and that the plaintiff had not received any satisfaction for the same, or for the wheat so improperly set out and spoiled. The bill therefore prayed, that the defendant might account with the plaintiff for the value of the tithes of the said several crops of wheat and tares respectively, and set forth the quantity and true value thereof.

GREEN  
against  
BRIGGS.

The defendant admitted, that the plaintiff's late husband had been, for some years before his death, and the plaintiff since, lessee and occupier of the rectory, and entitled to *the great tithes* arising therein, to be set out by the occupiers according to the custom of tithing in the parish; that the custom of tithing wheat and tares was in manner as set out in the bill; that he occupied land there, and had sowed the same with wheat and tares and other grain; and that the plaintiff was entitled to the tithes thereof; but he denied, that in order to overturn the custom, he had set up his tithe corn as described in the bill, or that it was spoiled, or that he insisted he would set out the tithe of wheat in single sheaves, or that he had carried away the tares, as stated in the bill: and he set forth the quantity of land he so held, and of his wheat and tares, and the manner in which he had set out the tithes of the same, and what the plaintiff had taken away.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides; and reading the proofs taken in the cause; and on debate;

THE COURT ordered the deputy remembrancer to take an account of all the tithes of wheat, tares, and other grain, which the defendant had during the time demanded by the bill, and to state the same to the court; and that the defendant do pay to the plaintiff her costs of this suit (except only such costs as relate to the examination concerning the custom of tithing).

PARKER, *Chief Baron.*  
ADAMS, *Baron.*  
PERROTT, *Baron.*

### WALTER against FLINT.

Kent, 16th July 1770.

TRIN. TERM  
10. GEO. 3.

THE rector of *Eard*, otherwise *Crayford*, in the county of *Kent*, claimed the great and small tithes, *Easter* offerings, dues, and duties belonging to the rectory, from *Michaelmas* sheep, calves, lambs, pigs, wool, and the feeding of milch kine and barren cattle, from *Michaelmas* Day 1767. See another cause, Trinity Term, 15. Geo. 3.

The rector of  
*Crayford*, in  
*Kent*, demands  
the tithes of  
from *Michaelmas*



WALTER  
against  
FLINT.

1767; particularly the tithes of feeding and depasturing several milch cows, a number of sheep, barren and unprofitable cattle, and the tithes of calves, lambs, pigs, and wool.

The defendant admits, that he had the titheable matters mentioned in the bill from *Michaelmas* 1767 to *Michaelmas* 1768; and says,

that there are compositions to pay 2s. 6d. yearly for every barren beast;

a gross sum of 10s. in lieu of the tithes of poultry and garden vegetables; 6d. a lamb; 4s. a score for sheep; and 2s. for a sow;

that in *January* 1768 the plaintiff gave notice, that he would take his tithes in kind;

that on the 25th of *February* the defendant set out his tithe lambs, geese, and pigs; but the plaintiff refused to take them until they were fit for the butcher;

The defendant admitted, that the plaintiff was rector of the parish, and entitled to all tithes, offerings, dues, and duties belonging thereto; that he had, ever since *Michaelmas* 1767, been an inhabitant therein; that for the year ending *Michaelmas* 1768, his family had consisted of seven persons, of the age of fourteen and upwards; and said that, by the custom of the parish, there had been usually paid for the tithe of dry, barren, and unprofitable cattle, the yearly sum of two shillings and sixpence a head; that the tithes of such cattle depastured by him in the said year amounted to three pounds; that by another custom of the said parish a gross sum of ten shillings, or thereabouts, had annually been paid in lieu of the tithes of poultry and garden stuff; that it had been usual for him and the other farmers of the parish to satisfy their small tithes to the plaintiff and his lessees by several pecuniary payments, viz. two shillings and sixpence a cow and other beasts; sixpence for a lamb; four shillings a score for wether or dry sheep; two shillings a sow; ten shillings, or thereabouts, for poultry and garden stuff; the tithes of wool either in kind or by the payment of two shillings in the pound upon the money arising from the sale thereof; that the plaintiff, notwithstanding such customary payments, caused notice to be given, about *January* 1768, that he would, for the future, take his small tithes in kind; that, in consequence of such notice, he the defendant, about the twenty-fifth of *February* following, when all his lambs were about seven weeks old, and able to live without their dams, gave notice to the plaintiff to take his tithes of such lambs, which he refused to do, insisting that he was not obliged to take his tithe lambs until he, the defendant, had made them fat; and that when the defendant had so done, and had sent or was ready to send his nine parts of such lambs to market, he, the plaintiff would then, and not before, come and take away his tenth part, although he, the plaintiff, well knew, that in order to make his lambs fat the sooner, had fed his ewes and lambs with ground beans and clover chaff, which had yielded tithe to the plaintiff before *January* 1768 and up to the *April* following; that the plaintiff, at the same time, informed the defendant, that he would not, for the future, take any young lambs, or calves, or pigs, and would not take his tithes of any calves or lambs until they were fit for the butcher, and that he would then demand and insist upon every tenth calf or lamb so made fat, or every tenth shilling of the money for which such calves or lambs should be sold; that with respect to the tithes of hogs or pigs, the plaintiff also informed him, he would not take his tithes thereof until the same were actually put

put up in the sty to fatten ; that instead of taking his tithe of geese and eggs in kind, he would insist upon every tenth goose after the same was brought up and fattened ; and that for every beast which the defendant fattened and sold, he should account for and pay him every tenth shilling profit made from such beast when so fattened and sold, or to that effect ; that in *October* then last, the plaintiff came to his house, and demanded from him an account of the whole year's profit made from such part of the stock and produce of his farm as was liable to the payment of small tithes ; that he thereupon remonstrated on the unreasonableness of such demand, and the next day went to the plaintiff, and offered to account with him for his small tithes in any reasonable manner, but which he refused to settle otherwise than by accounting for the whole year's profits ; and insisted, he was entitled to the tenth part of such profit : and he submitted to the court, that the plaintiff ought to abide by and accept of the said several customary payments in lieu of his privy or small tithes, or to take such tithes in kind ; and he said, that he was ready and willing to render to the plaintiff his small tithes for the time to come as the court should direct.

WALTER  
against  
FLINT.

that in *October* 1768, the plaintiff demanded an account of the whole year's profit.

The plaintiff replied ; the defendant rejoined ; and witnesses were examined on both sides ; and upon hearing counsel on both sides ; and reading divers of the proofs taken in the cause for the defendant ;

The cause heard.

THE COURT declared, " that the notice given by the plaintiff to the defendant in the month of *January* 1768 for taking his privy or small tithes in kind, did not avoid the yearly composition subsisting at *Michaelmas* 1767 of two shillings and sixpence a head for each cow and other beasts, sixpence for each lamb, four shillings by the score for wether or dry sheep, two shillings for every sow, and two shillings in the pound upon the money arising by the sale of the defendant's wool ;" AND THEREUPON ORDERED the deputy remembrancer to take an account of the tithes due from the defendant to the plaintiff for the several titheable matters and things aforesaid according to the aforesaid compositions ; the defendant to account with the plaintiff for tithe in kind of his poultry and garden stuff, and for *Easter* offerings, after the rate of twopence a head for himself and his family above fourteen years of age.

The Court of opinion, that the notice given in *January* 1768 did not avoid the yearly compositions ;

and direct the tithes to be paid according to the compositions.

The deputy remembrancer made his report, dated the thirteenth of *June* last ; and upon reading the same, and hearing counsel for both parties, the report was, on the ninth of *July* 1774, confirmed, and the defendant ordered to pay thirty-two pounds, nineteen shillings, and eightpence, for the compositions,

WALTER  
against  
FLINT.

compositions, tithes in kind of poultry and garden stuff, and for Easter offerings ; and each party to abide by his own costs.

SMYTHE, *Chief Baron.*

PERROTT, *Baron.*

EYRE, *Baron.*

BURLAND, *Baron.*

TRIN. TERM,  
10. GEO. 3.

• ROGERS against PARKIN.

*Yorkshire, 2d July 1770.*

The prebendary of *Laughton*, in *Yorkshire*, is entitled to the great and small tithes of *Deep Carr's Farm*, *Stubbing's Farm*, and *the Horse Close*, in the parish of *South Auston*, in kind.

THE plaintiff, as lessee under the *Rev. Hugh Thomas*, doctor in divinity, prebendary of the prebend of *Laughton in the Morthing*, belonging to the cathedral and metropolitan church of *Saint Peter*, of *York*, claimed the tithes, both great and small, of the chapels and townis of *South Auston*, *North Auston*, and *Wood*, and particularly of *Deep Carr's Farm* and *Stubbing's Farms*, in the parish of *South Auston*, within the said prebend.

The defendants said, that they had rented and occupied, for four years past, *Stubbing Farm* and *the Horse Close*, in the parish of *South Auston*, consisting of arable, meadow, and pasture land ; that no tithes of any species or kind had ever been paid for the said farm called *Stubbing's* ; that when they took the farm, they took it tithe free ; that the said farm was formerly part of an estate, called *the Branchcliffe Grange* ; that *the Branchcliffe Grange* was always reputed to belong and appertain to a certain ancient monastery or abbey called *Roche Abbey*, and exempted from the payment of tithes ; and that as no tithes had been used and accustomed to be paid for the same, they hoped the said farm was not liable thereto, or that they should not be decreed to make the plaintiff any satisfaction for the same. They admitted, that *the Horse Close* was subject to the payment of tithes ; and said, that the same had been paid to *Midsummer 1768*.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on the plaintiff's part only ; and upon hearing counsel ; and reading the lease and the depositions ;

THE COURT ordered the defendants to account (a) with the plaintiff for all the several titheable matters and things demanded by the bill, with costs,

PARKER, *Chief Baron.*

ADAMS, *Baron.*

PERROTT, *Baron.*

(a) FRANCIS INGRAM, Esq. *Deputy Remembrancer.*

SALT



SALT *against* SWAINE.TRIN. TERM,  
10. GEO. 3.*Essex*, 13th July 1770.

THE vicar of *Nasing*, in the county of *Essex*, claimed all sorts of tithes yearly arising therein, except the tithes of corn, grain, and hay, particularly of *Kersey's Farm*, of six acres of land called *Islands*, and of *Lodge Farm*, in the said parish.

The vicar of *Nasing*, in *Essex*, claims the small tithes of *Kersey's Farm*, the *Islands*, and *Lodge Farm*.

The defendant *Swaine* admitted, that he occupied *Kersey's Farm*; several acres of arable, meadow, and pasture land; five other acres of land, of which three were arable; and two acres of boggy land, which produced nothing but osiers.

The defendant *Swaine* admits, he holds *Kersey's Farm* and the *Islands*.

The defendant *Stanisford* admitted, that he occupied *Lodge Farm*; and said, that he paid to the plaintiff a pecuniary composition for all tithes to *Lammas* 1764; that the plaintiff had given him a receipt for the same, dated the thirteenth of *August* 1764, as set forth in his answer; and that therefore he had no right to any discovery previous to the second of *August* 1764; and he set up the following *modus*, to wit, that there was payable on every first day of *August*, for every cow which had a calf fallen within the parish, fourpence, in lieu of tithes in kind of milk and of such calf; for an heifer of the first calf fallen in the parish, twopence halfpenny, in lieu of tithe of milk and of such calf; for a fore milch cow, twopence, in lieu of tithe of milk of such cow; for a cow and a calf not fallen in the parish, but bought in for depasturage, threepence; for a heifer kept a year within the said parish, twopence; for depasturage of a fatting beast kept within the said parish, twopence; for all sheep bought after *Candlemas Day*, one penny for each sheep, in lieu of tithe wool and lamb of each sheep; that the said sums were payable upon the first day of *August* in each year to the vicar, in lieu of the several titheable matters before mentioned. He also said, that as to the other vicarial tithes, the same were, and had been time out of mind, payable in the following manner, *viz.* that for every sheep in such year in which the same was respectively bought before *Candlemas*, or any other sheep, which the owner should have or keep within the said parish before *Candlemas Day*, the tithe of the wool of such sheep and lambs were due to the vicar; but that in case the owner should have but seven lambs, then the vicar was to have one lamb, paying the owner one halfpenny for each lamb from seven to ten on *May Day* in every year, when he was to take such lamb away, the owner being to chuse the two best lambs, and the vicar the third best; that if the owner had under seven lambs, the vicar was to have one halfpenny for each lamb; that if any owner of lands or tenements within the said parish should have ten sucking pigs pigged therein, the vicar was to have

The defendant *Stanisford* admits, that he holds *Lodge Farm*, and sets up several *modus*.

The *modus* stated.

SALT  
against  
SWAINS.

have one pig ; and if but seven, the vicar was to have one pig, paying one halfpenny for each pig from seven to ten to the owner when taken away, viz. at a fortnight old ; and if under seven, the vicar was not to have any thing for the same ; that if the owner should have ten young goslings hatched in the said parish, then the vicar was to have one gosling ; and if the owner should have but seven, the vicar was to have one, he paying the owner one farthing a gosling from seven to ten when the vicar took such gosling away, which he was to do at two months old ; that the vicar was to have the tenth of all fruit growing in the said parish ; that the said customary payments in lieu and full satisfaction of tithes in kind would appear to have been made, and such particular sums paid by the occupiers of land within the said parish, and time out of mind received by the respective vicars thereof in full satisfaction for the said tithes due to them ; and that such customary payments had been so as aforesaid settled and admitted as the settled rates, manner, and customary method for paying tithes in the said parish, and had been so publicly acknowledged by the plaintiff's predecessors, and had been entered and recorded in some books or book belonging to the said parish, or in some court held therein, and frequently read in the parish-church by the former vicars there ; that the plaintiff ought to be concluded by the said *modus* and customary payments, and the defendants have the same benefit as if they had pleaded them in bar of the plaintiff's demand of the tithes before mentioned. They also said, that *G. Manby*, clerk, late vicar of the said parish, in 1722, filed his bill in this court against *T. Burghe* and another, who occupied the same farms which were now occupied by the defendants, praying an account from them for the tithes of the said farms, and payment of what should be due thereon ; that they, by their answers, insisted on the said *modus* and customary payments, or some such *modus* or customary payments, and offered to prove such *modus* by the presentments of certain courts leet or courts baron ; that the said *Manley* thereupon acquiesced in such *modus*, and forebore to prosecute his suit ; and that the succeeding vicars, except the plaintiff, had also acquiesced therein ; and therefore that they did not believe, that the said *Burghe* did then pay to the vicar all small tithes accruing due on the said lands, or any composition in lieu thereof, except as aforesaid, nor did they believe that all small tithes, or any part of the said farms, were usually, or ever, paid or compounded for, save as aforesaid, and they offered and submitted to pay and make satisfaction to the plaintiff for his tithes of all the aforesaid titheable matters and things, according to the ancient *modus* and customary payments mentioned, with his costs of suit, if he should think proper to accept the same in that manner ; and concluded, &c. : before any further proceeding were had, the defendant *Edward*

Staningford

*Stanisford* died ; and the said suit being properly revived pursuant to order ;

SALT  
against  
SWAINE.

The cause  
heard.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on both sides ; and now upon hearing counsel on both sides ; and reading the depositions of *Elizabeth Webb* to the second, third, and fourth interrogatories ; and upon the defendant's counsel offering to read her deposition to the fifth interrogatory, and the exhibit marked B, purporting to be an account of the *modus*, and to have been exhibited to the witnesses produced and examined to the said interrogatory on the behalf of the defendants to depose unto ; and the same being objected to by the counsel for the plaintiff, and the Court allowing the said objection, and ordering that the deposition of the said *Elizabeth Webb* to the said fifth interrogatory be suppressed ; and reading the depositions of *Joseph Acres* to the second and third interrogatories ; and upon the defendant offering to read a copy of the answer of the said *Thomas Burge* and another to the bill of complaint of *G. Manley*, clerk, in their answer mentioned ; and the reading thereof being objected by the plaintiff's counsel, and the Court allowing the said objection ; and upon full debate of the matter ; it not appearing to the Court that the *modus* or customary payments in the said answer particularly mentioned were well laid, or that any of such *modus* or customary payments were well proved ;

Evidence rejected.

Evidence rejected.

THE COURT ordered the deputy remembrancer to take an account of what was due to the plaintiff from the defendants for the full value of the several titheable matters and things demanded by the bill, without prejudice as to any ancient customary payment in lieu of the tithes in the said answer mentioned, which may be hereafter well laid and properly proved.

The Court being of opinion, that the *modus* were not well laid or proved, decree the tithes to be paid in kind ; but without prejudice to the question as to the *modus*.

PARKER, *Chief Baron*.  
ADAMS, *Baron*.  
PERROTT, *Baron*.

### WELLS against PAGE.

*Berkshire*, 21<sup>st</sup> June 1770.

TRIN. TERM,  
10. GEO. 3.

THE rectory of *Letcombe Bassett*, in the county of *Berks*, claimed all tithes arising therein ; and stated, that the defendant had depastured several sheep on a down called *the Court Down*, in the said parish ; that particularly on the twelfth of *May* 1766, he had brought into the parish, and depastured upon the said down, several sheep and three lambs, and had continued to depasture the same thereon until the seventh of *June* following, from the 12<sup>th</sup> of *May* to the 6<sup>th</sup> of *June*, and then sheared in *West Challow*, and afterwards depastured on *Court Down* until they are sold.

The rector of *Letcombe Bassett*, in *Berkshire*, is entitled to the tithe wool of sheep fed on *Court Down* by a rack shepherd of *West Challow*, and afterwards

when



WELLS  
against  
PAGE.

when he drove them about two miles out of the said parish to be shorn, and sheared them out of the said parish on the ninth of *June* aforesaid; that after they had been so shorn, he, on the same day, brought them back into the said parish, and continued to depasture them there several months afterwards till they were sold off by parcels. The plaintiff therefore insisted, that he was entitled to an agistment tithe for such sheep during the time they had been so fed and depastured in the said parish, and the rather, because the defendant was a *tack shepherd*, rented a cottage only in the parish or tithing of *West Challow*, and had no land in that parish. The bill therefore prayed, that the defendant might set forth an account of the tithe of wool aforesaid and the value thereof; and that an account might be taken of what was due to the plaintiff for the single value of the agistment tithe of the said sheep; and that the defendant might pay the same to the plaintiff.

The defendant admitted, that the plaintiff was rector, and entitled to all tithes arising in the parish; and said, that in the year 1765 he was an inhabitant of the parish of *West Challow*; that about *Allballow Tide* in the same year, he had one hundred sheep; that he had fed and depastured the said one hundred sheep during the whole winter in *West Challow*, and until the twelfth of *May* 1766; that having, on that day, taken common for the purpose of feeding them, he depastured them upon *Court Down*, where six of the said sheep died; that on the fifth and sixth of *June* following, he took the rest, being ninety-four, into the parish of *West Challow*, and sheared them in a barn near his house there, it being the most convenient place for that purpose; that it had been the invariable practice for farmers and inhabitants of other parishes who used to depasture their sheep on *Court Down* to fetch their sheep home from thence to their respective parishes to be shorn; that two days after the said sheep were so shorn, he drove them to *Court Down* aforesaid, from whence fourteen of them were shortly afterwards taken away to *West Challow*; that about the fifteenth of *August* then next following, he sold ten more of the said sheep; that he sold the residue by degrees before *Allballow Tide* in the said year 1766; that the said sheep having been shorn in *West Challow* parish, where they had been depastured from *Allballow Tide* to the twelfth of *May*, he had paid fifteen shillings to the tenant of *J. Pigott*, impropiator of the said parish, for the tithe wool of the said sheep so shorn in the said parish; and he denied, that he had sheared the said sheep in *West Challow* to defraud the plaintiff; and insisted, that as the said sheep had been so long depastured in *West Challow*, and shorn there for his convenience without fraud, and as he had paid to the tenant or lessee of the impropiator of *West Challow* the tithe of the said wool, he was not obliged to pay the plaintiff the tithe of the said wool, the value

value of which, he said, was worth fifteen shillings and eightpence, and no more. He admitted, that he had, on the twelfth of *May* 1766, or at some other time in that year, brought into *Letcomb Bassett* four or five lambs, and depastured them on *Court Down*; and that, on the ninth of *June* in the same year, he brought back his sheep as aforesaid. He also admitted, that he was only a *tack shepherd*; that he rented a cottage only in the parish of *West Challow*; that he had no land in that parish; that he moved his sheep to the distance of two miles to be shorn; that he sheared his sheep in his brother's barn, as he had none of his own; and that he had paid him the fifteen shillings for the tithes of his wool, as he rented the tithes of *West Challow*; but he denied, that such payment was collusive. He also admitted, that his sheep had been depastured in *Court Down*, and not elsewhere, after they had been shorn; and that he had fold them off by parcels.

WELLS  
against  
PAGE.

The plaintiff replied; the defendant rejoined; and witnesses were examined only on the plaintiff's part. Upon hearing counsel for the plaintiff, and none appearing for the defendant; and upon reading an affidavit, and the service of *subpœna* to hear judgment; and also the bill and answer;

THE COURT ordered the deputy remembrancer to take an account of what was due from the defendant to the plaintiff for the agistment tithe of the sheep demanded by the bill; and the defendant to pay the costs, unless he shall shew cause to the contrary, first paying five pounds for this day's attendance two days before the day of shewing cause; but on the fifteenth of *November* 1770, no cause being shewn, the said decree was made absolute.

GOODFELLOW against ROBERTS.

MICH. TERM,  
11. GEO. 3.

*Northamptonshire, 19th November 1770.*

THE rector of *Great Houghton*, in the county of *Northampton*, claimed all the tithes arising therein; and stated, that the defendants had, for several years past, occupied lands therein, and had growing thereon corn and grain, which they had reaped; barren and unprofitable cattle, which they had fed and depastured, and for the herbage of which a satisfaction for tithe was due, at the rate of two shillings an acre, or of four shillings an head for each beast; but which they had refused to pay.

The rector of *Great Houghton*, in *Northamptonshire*, is entitled to the great tithes in kind, and to 2s. an acre, or 4s. a-head, for the tithes of depasturing barren cattle.

The defendant *Roberts* admitted, that the plaintiff was rector, and entitled to the tithes of corn and grain, and other great and predial tithes; that he, the defendant, had occupied divers lands in the parish for seven years past, and until *April* 1764, and

GOODFELLOW  
against  
ROBERTS.

and that some satisfaction for tithe herbage of cattle might be due; but he insisted, that it was only the sum of one shilling and sixpence in the pound upon the lands so fed; and that the tithe payable for ploughed land was five shillings an acre, and no more, which, he said, he was willing to pay.

The defendant *Martin* affirmed, that he had not set out his tithes in kind, nor paid the plaintiff any money in lieu thereof, by reason he was one of the people called *Quakers*.

The plaintiff replied; the defendants rejoined; and no witnesses were examined on either side; and upon hearing counsel for the plaintiff and the defendant *Roberts*, none appearing for the defendant *Martin*; and upon reading an affidavit of the service of *subpœna* to hear judgment on him; and on full debate of the matter;

THE COURT ordered the deputy remembrancer to take an account of all the titheable matters and things demanded by the bill, which arose on the lands respectively occupied by the defendants, with costs.

PARKER, Chief Baron.  
ADAMS, Baron.  
PERROTT, Baron.

MICH. TERM,  
10. GEO. 3.

YATEMAN against COX; et c. Contra.

Oxfordshire, 13th December 1770.

The plaintiff states, that the rectory of Baldon, in Oxfordshire, consists of the four townships of Foot Baldon, St. Lawrence Baldon, Marsh Baldon, and Little Baldon;

S. C. 7. Bro. P. C. 59.  
S. C. Rayn. 638, 639.

that it was parcel of the monastery of Dorchester;

that previous to the dissolution of the monastery a chapel was built in Marsh Baldon, as a chapel of ease to the parish church; that Marsh Baldon afterwards acquired the reputation of a distinct rectory;

THE bill stated, that the rectory of the parish of Baldon, in the county of Oxford, previous to the dissolution of the monastery of Dorchester, belonged to and was part of the possessions of the said monastery as a rectory impropriate; that the said rectory comprehended the townships of Baldon, otherwise Foot Baldon, Saint Lawrence Baldon, Marsh Baldon, and Little Baldon; that a chapel was erected before the dissolution of the monastery in the township of Marsh Baldon as a chapel of ease only to Baldon; that it was served by a curate; that it was presented to for many years as a chapel; and that it afterwards took the name of a church; that upon the dissolution of the monastery of Dorchester, the said impropriate rectory of Baldon, including Marsh Baldon, became vested in THE CROWN; that Henry the Eighth granted the said rectory of Baldon to Dionysius Toppes for his life; that afterwards Queen Elizabeth granted the reversion thereof to Hall and his heirs; that Hall conveyed the same to Anthony Pollard (the ancestor of the defendant Elizabeth Lane) and Philippa his wife; that in the reign of James the First, the said chapel or township of Marsh Baldon acquired the reputation of a parish and rectory, and

belonged



belonged to *Lewis Pollard*, grandfather of the said *A. Pollard*, as parcel of the original rectory of *Baldon*; that the said *Lewis Pollard*, in the reign of *Charles the First*, sold and conveyed the rectory of *Baldon*, and also the rectory or reputed rectory of *Marsh Baldon*, to *James Jennens*, excepting the tithes of *Little Baldon*; that the plaintiff, by several mesne conveyances for several years, had been seised in fee, and was then owner of the impropriate rectory of *Baldon*, comprehending *Baldon*, otherwise *Foot Baldon*, &c. as aforesaid: that, as owner thereof, he was entitled to all manner of tithes, both great and small, yearly arising in the said townships of *Marsh Baldon*, *Foot Baldon*, and *Saint Lawrence Baldon*; that, for some years past, the defendant *Cox* had occupied a piece of land, called *Smith's Piece*, within the said impropriate rectory; that he had reaped and gathered therefrom, in the year 1766, a quantity of hay, the tithes whereof were due, and ought to have been paid to the plaintiff; that in the said year he had also occupied a tenement and land in *Foot Baldon*, or *Saint Lawrence Baldon*, and another tenement and land in *Marsh Baldon*, all lying dispersed in the common fields of *Baldon*, and within the said rectory of *Baldon*; that he had cut therefrom a quantity of clover, and carried the same away, without setting out the tithes thereof; that the greater part of the lands belonging to the townships of *Marsh Baldon*, *Saint Lawrence Baldon*, and *Foot Baldon*, lay intermixed in the same common fields; that each of the tenants and occupiers of lands in the said townships had, in respect of the said lands, common for a certain number of sheep and cows in the said common fields; that the said defendant had fed and depastured in the said year, on the said common fields, in right of his farm in *Foot Baldon*, or *Saint Lawrence Baldon*, several cows and sheep; that he had had therefrom milk, lambs, and wool, the tithes of which ought to have been set out and paid to the plaintiff; that in the said township of *Marsh Baldon*, within the said impropriate rectory of *Baldon*, there were several pieces of meadow or pasture land, called *Battin's Close*, *Cheney's Close*, otherwise *Hayer*, otherwise *Burnthouse Close*, occupied in 1759 by several people; that the tithes of corn, grain, and hay, yearly arising in and upon the said closes, had been, time out of mind, set out and paid to the persons from time to time entitled to the said rectory impropriate of *Baldon*; that the tenants of the said closes severally made hay, and had duly set out the tithes thereof for the plaintiff's use; but that the defendant *Cox* had entered on the said closes, and took away the tithes, and converted the same to his own use, without making the plaintiff any satisfaction for the same; that there was in the said rectory of *Baldon*, a piece of land, called *Knowle*, thencefore parcel of the said common fields, but for many years then past enjoyed in severalty, and planted with furze; that five lays or half acre thereof were, in the year 1766, in the occupation of the defendant *Lane* and

*Bacon*;

2

YATEMAN  
against  
Cox;  
et d. Contra.

that the impropriate rectory of *Baldon*, including *Marsh Baldon*, had become the property of the plaintiff;

that the defendant *Cox* occupied *Smith's Piece*, and other lands lying in the common fields of *Baldon*;

that the occupiers had a right to inter-common on the lands of the townships;

that *Cox* also occupied *Battin's Close*, *Cheney's Close*, and *Burnthouse Close*, in *Marsh Baldon*;

that the defendants *Lane* and *Bacon* had cut furze from the *Knowle*;

YATEMAN  
against  
Cox;  
et i Contra.  
that Lane also  
occupied Hatchet  
Close, Forty Acres  
Piece, and Hatchet  
Piece;  
that Martin oc-  
cupied Hanging  
Lands;

that all the de-  
fendants had re-  
fused to pay him  
tithe of the said  
lands.

Bacon; that they, in the said year, gathered therefrom furze, and conveyed away the same without setting out the tithes, though the former occupiers had constantly paid tithes to the plaintiff; that the defendant Lane had also, from the first of January 1766, occupied several pieces of land lying within the said rectory, called *Hatchet Close, Forty Acres Piece, and Hatchet Piece*; that he had since that time reaped and gathered therefrom a quantity of hay, but had not set out the tithes thereof; that the defendant J. Martin occupied a piece of land, called *Hanging Lands*, for several years, as tenant to the defendant P. Bacon; that he had made thereon hay; that he had also fed and depastured cows, sheep, colts, and other titheable cattle, which had produced milk and calves, wool, and lambs, the tithes of all which were due to the plaintiff; that he, the plaintiff, had frequently applied to the defendants to come to an account for the tithes so by them respectively withheld from him, and to make him a satisfaction for the same, but that they had refused so to do. The bill therefore prayed, that the defendants might be compelled, by decree, to come to a fair account with the plaintiff for all such tithes by them respectively withheld or taken as aforesaid, and to make a satisfaction for the same.

The defendant  
Cox dies, and the  
cause is revived  
against his sister  
and executrix.

The plaintiff filed his *bill of revivor and supplemental bill* against Sarah Cox, stating, that W. Cox the defendant had died without making him any satisfaction for the said tithes; that he had appointed her, his sister, executrix of his will; that she had proved the same, and possessed herself of his personal estate, &c.; that she had since his death taken up the tithes of hay in *Battin's Close*, and converted the same to her own use; and that she had refused to make him any satisfaction for the same; and praying that she might be decreed to account for the tithes so subtracted by her brother in his life-time.

The defendant's  
Lane and Bacon  
say, that *Marsh Baldon* is a dis-  
tinct rectory,

The defendants E. Lane and P. Bacon insisted, that the rectory of Baldon, otherwise *Foot Baldon*, and the rectory of *Marsh Baldon*, were two ancient, distinct, and adjoining parishes and rectories, and in some parts intermixed with each other; that the manors of *Foot Baldon* and *Marsh Baldon* were likewise ancient and distinct manors, and nearly co-extensive with the said parishes; that the rectory of *Foot Baldon*, and all the tithes thereof, both great and small, were, before the dissolution of the monastery of *Dorchester*, part of the possessions of the said monastery, as a rectory impropriate, and comprehended the townships of *Foot Baldon, Saint Lawrence Baldon*, otherwise called *Bishop's Baldon*, and *Little Baldon*; and that the rectory or parish of *Marsh Baldon* never was comprehended in the rectory of Baldon, otherwise *Foot Baldon*; that in the parish of *Marsh Baldon*, otherwise *Marsh Baldington*, there was an ancient parish church, which might formerly have been presented to as a chapel having the cure of souls; but that the same never was a chapel of ease

to Baldon; that the said parish of *Marsh Baldon* had been, long before the reign of *James the First*, considered as a parish and rectory of itself, as appeared by an ancient grant in the third year of the reign of *Edward the Third*, and in other deeds and ancient rolls of the courts held at *Marsh Baldon*, wherein *Richard de Alien* was called "rector of the church of *Marsh Baldington*;" that on the dissolution of the monastery of *Dorchester*, the rectory of *Baldon*, or *Foot Baldon*, not comprehending *Marsh Baldon*, save as to a portion of the great tithes thereof, became vested in THE CROWN; and that *A. Pollard* and his wife became seised thereof by grant from *Queen Elizabeth*; that the said rectory and appropriated portions of the rectory or great tithes of *Marsh Baldon* afterwards came to *L. Pollard*, who conveyed the same, in 1626, to *J. Jennens*; and that the said rectory and the said portions (except such of the tithes thereof as were excepted or reserved by the said *L. Pollard*, or that had been since granted away) had been, by several mesne conveyances and descents, since vested in the plaintiff. And they denied, that the said church, manor, or estate of *Marsh Baldon*, had ever belonged to *L. Pollard*; or that the said plaintiff was ever entitled to all tithes, both great and small, within the parish of *Marsh Baldon*; and insisted, that the defendant *Lane* was seised in fee, in her own right, of the manor or lordship of *Marsh Baldon*, then lately called *Marsh Baldon*, and to several farms and messuages thereto belonging, particularly to a farm known by the name of *the Manor Farm*; that she was also seised in fee of the advowson and right of patronage of, in, and to the rectorial and parish church of *Marsh Baldon*; that she being so seised did, in 1735, present the defendant *P. Bacon* to the said rectory and parish church; that he, being instituted and inducted thereto, became entitled to receive all tithes arising within the said parish and the titheable places thereof, or to some *modus*, composition, or satisfaction in lieu thereof, save and except certain corn tithes, in the proportion of one in fifteen, of and in certain pieces of land parcel of *the Manor Farm*, containing about ninety-six acres, and also on certain other lands lying dispersed in the common fields of *Baldon* of one in ten, and also except twenty shillings *per annum* which had been constantly and immemorially paid by her in lieu and satisfaction of some other tithes arising on the said lands belonging to her.

YATEMAN  
against  
Cox;  
et d. Contra.

and was not included in the conveyances of the rectory of *Baldon* to this plaintiff;

but that the said rectory and manor of *Marsh Baldon* belonged to the defendant *Lane*, who occupied the farm therein called *the Manor House*; that he presented the defendant *Bacon* to the said rectory; that *Bacon* is entitled to the tithes thereof, except a fifteenth of the corn tithes, &c. &c.

The defendant *Lane* also insisted, that there were divers ancient *moduses* payable by her to *Bacon*, in lieu of the tithes arising on certain lands in the said parish of *Marsh Baldon*, and particularly an ancient *modus* of fourteen pounds *per annum*, which had been immemorially paid by her and her ancestors to the rectors of the said parish, in lieu of all tithes arising within *the Manor Farm*. She also insisted, that she was also seised in fee, or otherwise entitled to certain pieces of land,

that there is a *modus* of 14l. a. year in lieu of the tithes of *the Manor Farm*;

that *Lane* is also seised of *Hatchett's Close*, the *Kewels*, &c.;



YATEMAN  
against  
Cox;  
et Contra.

called *Hatchett's Close*, *Knowle Piece*, and other lands partly in the said parish of *Marsh Baldon*, and partly to *Foot Baldon* formerly part of an estate called *Baldon*.

that the plaintiff  
is not entitled  
to the tithes of  
*Marsh Baldon*;

but to the tithes  
of *Foot Baldon*  
only.

Both the defendants denied, that the plaintiff was entitled to any tithes arising on the several pieces of land called *Smith's Piece*, *Forty Acres Piece*, *Battin's Close*, of three acres, *Cheney's*, otherwise *Hayes*, otherwise *Burnthouse Close*, and *Batten's Closes*, of one acre, or in *Twenty Acres Tenement*, in the occupation of the defendant *Cox*; but they admitted, that all the tithes of the other tenements of forty acres in the defendant *Cox's* occupation belonged to the plaintiff, as lying within the said rectory impropriate of *Foot Baldon*. They also admitted, that the defendant *Cox* had, during several years, occupied *Smith's Meadow* and *the Twenty Acres*, partly in the common fields of *Baldon*, and partly inclosed; and set forth the other lands occupied by other people.

The defendant  
*Bacon* says, that  
*Cox* took the  
tithes as his te-  
nant;

The defendant *Bacon* admitted, that the said *W. Cox*, as his tenant, and in his right, took in the said years, the tithes of the grass of the said meadows; and denied, that the other occupiers had taken away the said tithes; but said, that they were set out for him, and that the tithes of all hay arising from the said closes had been customarily, and time out of mind, set out and taken by him and his predecessors. He admitted, that the plaintiff's tenant did in 1759, but without any right, take away some hay from *Battin's Close*, under pretence of being entitled to the tithe thereof.

that there are  
commons ap-  
purtenant to  
*Foot Baldon* and  
*Marsh Baldon*;

The defendants said, that they believed that the tenants and occupiers of lands in the common fields belonging to *Foot Baldon* and *Marsh Baldon*, had, in respect of their said lands, right of common there for cows and sheep.

that the small  
tithes of the  
commons had  
been usually  
paid where the  
greater part of  
the lands lay;

The defendant *Bacon* insisted, that all tithes arising from the cows or sheep commoned on the said fields, in right of lands in the parish of *Marsh Baldon*, belonged to him as rector thereof; but as the said common fields had scarcely ever been full stocked, in order to avoid disputes, the small tithes arising therefrom had been usually paid for the whole to the tenants of the tithes of that parish in which the greatest part of the lands lay.

that there is in  
*Marsh Baldon* a  
heath ground,  
called *the*  
*Knowle*;

The defendants admitted, that there was a piece of heath ground lying in the said parishes, but belonging to the manor of *Marsh Baldon*, called *the Knowle*, which had been, for many years, planted with furze, and enjoyed in severalty, and was at certain times commonable to the owners of lands in both parishes; and they submitted, whether furze growing on commonable heaths was titheable. They denied, that they knew, or had heard, that tithes had ever been demanded for furze growing thereon till twenty years ago, though they admitted the tenants and occupiers thereof had of late years, and did then pay tithes

that the furze  
growing there-  
on is not tithe-  
able; but that  
if it was

in kind of all furze growing thereon to the plaintiff, notwithstanding the same in other parishes adjoining was not esteemed titheable.

The defendant *Bacon* insisted, that if the plaintiff had any right to tithes of any part of the said furze, he had likewise a right to all such parts as lay within the parish of *Marsh Baldon*. He admitted, that he held five lays or half acres of land in the *Knowle*, belonging to an estate in *Foot Baldon*; that in 1761 he cut furze and fern therefrom, and carried the same away, without setting out the tithes, and used the same in burning a kiln of lime for the manure of the lands in *Forty-Three Acres Piece*, whereof the plaintiff had received a portion of great tithes, and also in burning of bricks for the repairs of the farm-house; and he insisted, that it was exempt from the payment of tithes, even if furze were otherwise liable; but he denied, that the former owners thereof had constantly paid tithes for the same.

The defendants admitted, that there were, in *Marsh Baldon*, the lands called *Hatchett Close*, *Forty Acres Piece*, and *Hatchett Furlong*; that they had been in the occupation of the defendant *Lane* since January 1761; and that she had reaped and gathered therefrom hay, without setting out the tithe thereof, because she insisted, that the hay tithes of the said *Forty Acres Piece* were covered by the said *modus* or composition of fourteen pounds; and that the *Hatchett Piece* and *Hatchett Close* were part of *Little Baldon* estate, the tithes whereof were not purchased by *J. Jennens*. They further said, that they believed *L. Pollard* was, in his life-time, seised in fee of *Little Baldon Farm*, lying intermixed in the said parishes; and insisted, that the tithes of that part lying in *Marsh Baldon* then belonged to him and the minister or rector thereof; and that he excepted out of the sale, to the said *J. Jennens*, of the said improper rectory of *Foot Baldon* all the tithes whatsoever arising from the said *Little Baldon* estate: and that therefore none of the tithes arising from the said estate passed by the conveyance.

The defendant *Lane* admitted, that *Little Baldon* estate was, at the time of the sale and reservation, a freehold estate of inheritance; and that the said *L. Pollard* and his heirs, under such exception and reservation, afterwards enjoyed the said estate exempt from the payment of any tithes, save such as belonged to the rector of *Marsh Baldon* in right of that part of the said estate which lay therein; and insisted, that such part of the said estate as was become vested in her as heir to him ought to be held free and exempt from the payment of all the tithes, save as aforesaid. She also insisted, that the said *Hatchett Close* and other the lands part of the said *Little Baldon* estate vested in her, had been ever since held free from tithes since the said exception

YATEMAN  
against  
Cox;  
et 2 Contra.

he is entitled to the tithes of so much thereof as lay in *Marsh Baldon*; that the furze he cut in the parish of *Foot Baldon* was used to burn lime for manure, and bricks for the reparation of his house;

that the tithes of *Forty Acres Piece* are covered by the *modus*;

and that *Hatchett Piece* is in *Little Baldon*; that the tithes of *Little Baldon* were not conveyed to the plaintiff;

but that the same belongs to the defendant *Lane*;

YATEMAN  
against  
COX;  
et à Contra.

and reservation, save with respect to such rights as the rector of *Marsh Baldon* had to such part thereof as lay in his parish, and except such of the tithes as had been separated and sold therefrom; and insisted that as no tithes whatsoever, save as aforesaid, had since been paid to the impropiator of the rectory of *Foot Baldon*, they were not obliged to discover, whether any were paid to the rector of *Marsh Baldon*; and that all the small tithes in general of *Marsh Baldon* lands, and all the corn and hay tithes arising therefrom, which had been usually enjoyed by the rector of *Marsh Baldon*, still remained due to him as before the said sale or exchange of lands.

that the tithes  
of the Hanging  
Lands in *Marsh  
Baldon* belong to  
*Bacon*, as rector  
thereof.

The defendant *Bacon* admitted, that the defendant *Martin*, during the said years, had held the *Hanging Lands* lying in *Marsh Baldon* by lease from him, and that some hay and other tithes arose therefrom; but he insisted, that the plaintiff was not entitled to hay, or any tithes arising thereon, except of corn, but that the same belonged to the rector thereof; that they had constantly and immemorially been enjoyed by the defendant and his predecessors; and that, as rector of *Marsh Baldon*, he was entitled to all the small tithes, and also to certain portions or parcels of the great tithes arising therein, and also to the said *modus* or composition of fourteen pounds *per annum*, in lieu of the hay and all small tithes, and the greatest part of the corn tithes arising on the *Manor Farm*, and also to all hay tithes arising within the said parish (save of certain lands held by the plaintiff from *Queen's College*, in *Oxford*, called *Durham Sees* and *Spindlers*), and also to all other tithes whatsoever (except such parts or portions of the great tithes as had been usually held and enjoyed by the plaintiff and those whose estate he had), whether the same belonged to him by the first endowment of the said church, or by any subsequent gift, grant, endowment, prescription, permission, right, title, or claim whatsoever; that the general and unappropriated part of the said rectory of *Marsh Baldon* was vested in him by his institution and induction thereto; and that all new tithes arising therein, whereof no sufficient enjoyment had been had to fix the right thereto, belonged to him as general rector of the said parish.

The defendant  
*Martin* puts in  
the like answer.

The defendants *Cox* and *Martin* said, they held the said farm and lands as before-mentioned, and put in the like answers; and insisted, that the plaintiff was not entitled to the tithe in kind of hay, or any thing in lieu thereof; but believed, that the defendant *Bacon*, as rector of *Marsh Baldon*, was entitled to all tithes arising on the *Demesne Lands* of the manor of *Marsh Baldon*, and also to all manner of small tithes, or to some composition for the same; that the *Manor Farm* was part of the *Demesne Lands* of the said manor; and that an ancient composition of fourteen pounds *per annum* then was, and had been yearly paid by the owners of the said *Manor Farm*,



or their tenants, to the rector of *Marsh Baldon*, in lieu of all tithes arising therefrom.

The defendant *Sarah Cox* admitted, by her answer, her brother's death; and that she was executrix, and had sufficient assets, &c. : and the defendants set forth the several species of tithes they had upon their said lands.

*YATEMAN*  
against  
*Cox*;  
et c. *Contra*.

The defendant  
*Cox* admits as-  
sets.

The defendants *Bacon* and *Lane* filed their *cross bill* against *Yateman*, setting forth the several matters mentioned and insisted on in their answers to the original and amended bill; and praying, that a trial at law might be directed to ascertain the right to the tithes claimed by *Yateman*; that the conveyance made by *Lewis Pollard* to *James Jennens* of the rectory impropriate of *Foot Baldon* and the said impropriate tithes of *Marsh Baldon*, particularly described and set forth in the said bill; and also the agreements, articles, and deeds of exchange of lands part of *Little Baldon Farm* and of the tithes thereof might be produced at such trial, and likewise at the hearing of the cause; that *Yateman* might be restrained by injunction from proceeding in the mean time against the tenants of the plaintiffs and other inhabitants of the parish of *Marsh Baldon* for the titheable matters in dispute in the said cause; and that the plaintiffs might be quieted in the possession of their tithes according to their respective rights therein; and particularly that the right of the plaintiff *Elizabeth Lane* might be established in the tithes of her lands late part of *Little Baldon Farm*, which had not been sold or conveyed to *James Jennens* or to other persons under whom *Yateman* claimed; and also in all other lands and tithes which had been conveyed to her ancestors in lieu of the said *Little Baldon* tithes and lands.

*Bacon and Lane*  
file cross bills,  
and pray a trial  
to ascertain their  
right to the  
tithes of *Marsh*  
*Baldon* and *Li-*  
*ttle Baldon Farm*.

The defendant *Yateman* admitted, that *Elizabeth Lane* had been several years seised of some estate of freehold of and in the manor of *Marsh Baldon*, and also of *Hatchett Piece*, *Hatchett Close*, *the Knowle*, *the Great Monk Hill*, and part of *Little Monk Hill*; but said, that he did not know that they were part of *Little Baldon Farm*, excepting *Hatchett Piece*, which he admitted was part of the said farm. He also admitted, that the parish of *Baldon* comprehended the several townships aforesaid; that the rectory of the said parish formerly belonged to the monastery of *Dorchester*, in the county of *Oxford*; that afterwards the township of *Marsh Baldon*, which had a church or chapel, acquired the reputation of a parish; that the said church or chapel was originally endowed by the lord of the manor of *Marsh Baldon*, who had always presented an incumbent thereto; that *Elizabeth Lane* had, as lady of the said manor, presented the plaintiff *Bacon* to the said church or chapel; that he was thereupon

*Yateman* admits,  
that *Eliz. Lane*  
is possessed of  
the manor of  
*Marsh Baldon*,  
of *Hatchett Piece*,  
*Hatchett Close*, *the*  
*Knowle*, and *Li-*  
*ttle Baldon Farm*;

that she had  
presented *Bacon*  
to the church of  
*Marsh Baldon*;

instituted

YATEMAN  
against  
Cox ;  
et 2 Contra.

that he was en-  
titled to tithes,  
but not to the  
extent claimed ;  
and insists, that  
the rectory of  
*Baldon*, includ-  
ing *Marsh Bal-*  
*don*, and the  
tithes, except of  
*Little Baldon*,  
was conveyed to  
him ;

and that *Bacon*  
was only curate  
of the chapel.

instituted and inducted thereto ; that he thereby became entitled to the tithes of *the Manor Farm*, and of certain other lands within the said township, of which the chaplain of the said chapelry was thentofore endowed ; but not to all tithes, tenths, and oblations whatsoever, or to such tithes as were insisted on by the plaintiff *Bacon*. He insisted, that *Lewis Pollard*, in the fourteenth year of the reign of *James the First*, then impropiator of the rectory of all the *Baldons*, demised the same, for ninety-nine years, to *William Allen*, by the description of "all that rectory  
" or rectories, parsonage or parsonages of *Foot Baldon*, *Saint*  
" *Lawrence Baldon*, and *Marsh Baldon*, with the tithes thereof,  
" and three acres of arable lands lying in the fields parcel of  
" the glebe lands of *Baldon*, except the tithes of *Little Baldon*,  
" and of one tenement, and of one yard land in the tenure of  
" *P. Shurle*, and such tithes as had been enjoyed by *R.*  
" *Humphreys*, clerk, then incumbent of the said chapel of *Marsh*  
" *Baldon*, for twenty years then past ;" that he afterwards con-  
veyed the reversion thereof to *James Jennens* ; and that he had  
become entitled to the said rectories by a regular course of con-  
veyance from the said *James Jennens*. He also insisted, that in  
1293 *Peter De La More*, then lord of the manor of *Marsh Baldon*,  
presented *Hugh de Barkington* to the chapel of *Marsh Baldon* ;  
and that it was twice afterwards presented to as a chapel ;  
but he admitted, that before the dissolution of the monastery  
of *Dorchester*, and since that time, it had been presented to as a  
church ; and that *Marsh Baldon* had been reputed to be a parish,  
and the church a parish church, and an ancient rectory  
in reputation, and had been reputed to be separate and distinct  
from *Foot Baldon*, *Saint Lawrence Baldon*, and *Little Baldon*.  
He also admitted, that the plaintiff *Bacon* was presented to the cure  
of *Marsh Baldon*, under the name of the rectory and parish  
church of *Marsh Baldon* ; but he insisted, that there was no such  
ancient parish church as *Marsh Baldon* ; or that if there was,  
that the same was not a rectory, but only a ward or township  
with the rectory of *Baldon*, and a chapelry belonging to *Baldon*  
rectory ; and that he was not rector of the said parish, but only  
curate thereof under him ; and that the presentations of a clerk  
to the said church or chapel of *Marsh Baldon*, under the name of  
a rector, were done without the concurrence of the then owner  
of the said rectory of *Baldon*, and could not deprive him of  
any part of his said rectory ; and he claimed the whole tithes of  
the said parish (except such tithes within *Marsh Baldon* as the  
plaintiff *Bacon* could shew a right to by grant or prescription),  
under the words of the conveyance from *Lewis Pollard* in 1626,  
and as a general impropiator thereof. He admitted, that the  
inhabitants of *Marsh Baldon* had, for many years, baptized their  
children in the church or chapel of *Marsh Baldon*, and had  
buried their dead in the chapel or church yard there ; but  
insisted, that such privileges were enjoyed by other chapelries

YATEMAN  
against  
COX;  
et à Contral.

to ease the inhabitants from carrying their children and dead to the rectorial church, and was not any evidence of an independent church or rectory. He also admitted, that *Foot Baldon* and *Saint Lawrence Baldon*, with the greatest part of *Little Baldon*, paid parochial rates together, and maintained their poor separate from *Marsh Baldon*; and that *Marsh Baldon*, with small portions of *Little Baldon*, were also rated together separate from the other *Baldons*. He insisted, that the said *L. Pollard* was, in 1626, also seised of the said farm and estate called *Little Baldon*; and admitted that *John Danvers*, father of *Sewan Danvers*, was at the same time seised of the said manor and manor farm of *Marsh Baldon*; that, as lord of the said manor, he had a right of presentation to the said church or chapel; and that the said *Robert Humphreys* was then incumbent thereof, and held and enjoyed all the glebe lands and tithes with which the said chapel had been endowed. He said, that he believed that the said *L. Pollard*, or *J. Pollard* his son, who intermarried with the said *S. Danvers*, afterwards sold the whole, or the greater part of *Little Baldon*, with all tithes arising therefrom; but whether on the sale thereof, and of the said estate occupied by the said *Shurle*, they made any reservation thereof, or of any of the tithes thereof, from the defendant, he knew not; but admitted, in case any part of the said estates or tithes were reserved, the same descended to the plaintiff *Lane*, grand daughter of the said *J. Pollard*. He further insisted, that after the sale of the said rectory to the said *J. Jennens*, the said *L. Pollard*, and also the purchasers of the said estate claiming under him, had held and enjoyed *Little Baldon* estate free from the payment of tithes, except such parts and tithes as had been since separated therefrom. He admitted, that the plaintiff *Lane* had, for many years, held lands free from the payment of tithes; and insisted, that such lands were part of *Little Baldon* estate, and some of the lands whereof the said *L. Pollard* reserved the tithes on the sale of the said rectory; but he admitted, that such lands and tithes, not having been sold with the rest of *Little Baldon* estate, had descended to her, as heir of the said *L. Pollard*; but whether such lands were part of *Little Baldon* estate, or exempt from the payment of tithes, he could not set forth. He insisted, that divers agreements and conveyances had been executed between the said *L. Pollard* and *J. Pollard*, and those claiming under them, with other persons proprietors of lands in *Baldon*, and divers exchanges made of land parts of *Little Baldon Farm*, for other lands belonging to such other persons; and that the tithes of the said lands were also exchanged with the said *J. Jennens*; and that by means thereof the tithes of the said lands were separated from lands themselves, and belonged to him as claiming under the said *James Jennens*. He admitted, that he claimed the tithes of all hay arising on the said lands late part of *Little Baldon Farm*, or on the lands taken in exchange for the same; and



YATMAN  
against  
Cox;  
et al. Genra.

that in 1759 he ordered his tenant to take tithes of hay arising on all the lands in *Marsh Baldon* whereof he was entitled to the corn tithes when the same were sown with corn, and particularly on *Smith's Piece*; that his tenant took away part of the grass mowed on the said piece as the tithe thereof, without the tithe being properly set out; that an action of trespass was brought against his tenant; and, as the said tithe had been irregularly taken, he suffered judgment to go by default. He insisted, that all tithes on *Smith's Piece* and the several other pieces of land titheable in like proportions, and which had been regularly set out and marked as tithe, had, from time to time, been enjoyed by the defendant and his tenants of the said rectory of *Baldon*, and by the several owners and occupiers thereof, ever since such proportion and mode of tithing had been established.

The plaintiff in the original cause replied; the defendants rejoined; witnesses were examined on both sides: the plaintiffs in the cross cause replied; and the defendant rejoined; but no witnesses examined on either side.

By an order made in the cross cause, it was ordered, that the plaintiffs should be at liberty to read on their behalf the depositions of the witnesses in the original cause.

The causes  
heard.

Upon hearing these causes several days, and counsel for all parties; and on reading an order to prove exhibits at the hearing; and reading for the defendants a record of the FIRST FRUITS OFFICE of the valuation of ecclesiastical livings taken by special commission issued for that purpose in the twenty-sixth year of the reign of *Henry the Eighth*, under the title, "*Cuddeſden Decanatus et Aſton Decanatus*;" and reading, for the plaintiff, several entries in the said book, under the title, "*Extenta Poſſeſſionum pertinent. Regim. Coll. Oxon.*;" and reading an order for the plaintiff to prove exhibits, &c.; a copy from the taxation roll for ecclesiastical benefices, dated the thirty-first year of *Edward the Firſt*; an extract, dated the thirty-first year of the said king, under the title, "*Decanatus de Cuddeſden*;" "*Inquiſitio poſt Mortem Philip S. De La Mere*;" an exhibit marked letter B, from the registry of the diocese of *Lincoln*; a copy from the augmentation office of the grant of the rectory of *Baldon* to *Dionyſius Toppis*, in the twenty-eighth year of *Henry the Eighth*; a copy from the records in the rolls chapel of the grant of the rectory of *Baldon*, dated the third of *December*, in the eighth year of *Queen Elizabeth*; a copy of a grant from *Robert Hall* to *Anthony Pollard*, dated the seventh of *December*, in the eighth year of *Queen Elizabeth*; a copy from the licence of the records in the *Rolls Chapel* for *John Pollard* to convey to *Goddard*, dated the first of *April*, in the seventh year of *James the Firſt*; a copy from the augmentation office

YATEMAN  
against  
COX;  
et c. Contra.

office of the grant of the rectory of *Baldon* to *Dionysius Toppis*, dated the twenty-first year of *Henry the Eighth*; a copy from the office of the treasurer remembrancer of the grant of the rectory of *Baldon* to *Robert Hall* in fee, with several licences to alienate, dated the second year of *Charles the First*; an indenture, dated the thirtieth of *October*, in the fourteenth year of *James the First*; indentures of fine of *Michaelmas Term*, in the fifteenth year of *James the First*; an indenture, dated the twenty-second of *May*, in the second year of *Charles the First*, between *Nicholas Pollard* of the first part, and *James Jennens* of the other part; the exemption of a fine in *Michaelmas Term*, in the second year of *Charles the First*; an indenture, dated the twentieth of *September* 1649, between *John Fiennes* and *John Pollard* of the one part, and *James Jennens* of the other part; and also a schedule annexed to the said deed; an indenture, dated the eleventh of *July* 1691, between *Richard Jennens* of the one part and *William Jennens* of the other; indentures of lease and release, dated the tenth and eleventh of *July* 1691; an indenture, dated the thirtieth of *May* 1693; indentures of lease and release, dated the eleventh and twelfth of *September* 1699; various other indentures down to 1711; the last will and testament of *Francis Yateman*, dated the twenty-third of *July* 1712; two indentures, dated the fourteenth of *March* 1714 and the eleventh of *April* 1718; the last will and testament of *William Yateman*; the depositions of several witnesses; and the answers of the defendants *Lane* and *Bacon*, *Cox* and *Martin*; and reading, on behalf of the plaintiffs in the cross cause, an extract from the registry of the diocese of *Lincoln*, containing several entries in the book of institutions of the *Bishop of Chedworth*, dated respectively from the ninth day of *August* 1465 to the seventeenth of *May* 1533, being copies of institutions to the said rectory and parish-church of *Marsh Baldon*; several exhibits, marked A, B, C, D, E, F, and G, being like copies of institutions to the said rectory and parish church; and also on reading, on behalf of the defendant *Yateman*, from the said extract from the registry of the diocese of *Lincoln*, several entries in the book of institutions of *Bishop Chedworth*, dated the            day of           , and the tenth of *March* 1372, being copies of institutions to the church or chapel of *Marsh Baldon*; and also reading, for the plaintiffs, another entry, dated the twentieth of *October* 1371; a grant, dated in the thirty-third year of *King Edward the Third*, from *Sir Robert De La Mere*, Knight, to *Walter De Chilttenham*, rector of the church of *Heyford*, and *Richard De Alkynton*, rector of the church of *Marsh Baldington*, of the manor of *Marsh Baldington* and the advowson thereof; a grant, dated in the thirty-third year of *Edward the Third*, from the said *Walter De Chilttenham* and *Richard De Alkynton* to the said *Sir Robert De La Mere* and *Maud* his wife, of the said manor and advowson;

YATEMAN  
against  
Cox;  
et c. Contra.

advowson; an indenture of lease, dated the twentieth of June, in the first year of *Edward the Sixth*, between *Lord Windsor* and *John Roydon* and others, of the said manor of *Marsh Baldington* and the advowson thereof; an indenture of release, dated the fifth of April, in the fourth and fifth years of the reign of *Philip and Mary*, from *Walter Windsor*, son of *Lord Windsor*, to *Sir Thomas Pope* and his wife, of the manor of *Marsh Baldington*, and the advowson and right of patronage to the parish church of *Marsh Baldon*; indentures of fine of *Hilary Term*, in the fourth and fifth years of *Philip and Mary*, between the said *Sir Thomas Pope* and *Elizabeth* his wife, plaintiffs, and *William Lord Windsor*, defendant of the manor of *Marsh Baldon* and the advowson thereof; a deed of warranty between the same parties of *Easter Term*, in the fourth and fifth years of the said *Philip and Mary* of the said manor and advowson; an indenture, dated the eighteenth of January, in the thirty-seventh year of *Queen Elizabeth*, between *William Pope* of the one part, and *Daniel Danvers* and *Susannah* his wife of the other part, being a grant of the said manor and advowson; an indenture, dated the tenth of October 1613, being the settlement made on the marriage of *John Danvers*, son and heir of the said *Daniel Danvers*, with *Anne* the daughter of *Anthony Sadler*, of the said manor of *Marsh Baldington*, and the advowson and right of patronage to the said church of *Marsh Baldon*; an indenture, dated the twentieth of April, in the twelfth year of *Charles the First*, whereby *John Pollard* and *Susannah* his wife, daughter and heir of the said *John Danvers*, covenanted to levy a fine of the manor and advowson; and on full debate of the matter;

Both bills dismissed with costs.

THE COURT ordered the original bill, the amended bills, the bill of revivor and the supplemental bill filed by the plaintiff *Francis Yateman* to be dismissed with costs; and the bill filed by *Phannel Bacon* and *Elizabeth Lane*, widow, against the said *Francis Yateman*, to be likewise dismissed with costs.

A rehearing granted.

By an order made in this cause on the eighth day of June 1771, a rehearing was granted;

The proceedings revived against the representatives of *Elizabeth Lane*.

And *Elizabeth Lane* having departed this life, the suit was revived against *C. Willoughby*, executor of and devisee in her will, and *T. Cawley* her heir at law, who appeared, and the said *T. Cawley* filed his answer thereto, and the said suit and proceedings were revived.

The rehearing adjourned.

On the twenty-fifth day of June last, the further hearing of this cause was adjourned, with liberty to the plaintiff in the mean time, on payment of the costs of the day, to amend his bill of revivor, and require an answer thereto from the defendant *C. Willoughby*. In pursuance thereof, the plaintiff amended his bill of revivor, and the defendant filed his answer thereto.

The



The cause came on, on the twenty-sixth of *November 1772*, and was heard for several days; and upon hearing counsel for all parties; and reading several orders, to prove exhibits at the hearing *viva voce*; and upon reading the former evidence, with several additional exhibits; the Court ordered the cause to stand over for the judgment of the Court.

YATEMAN  
against  
Cox;  
et c. Contra.  
The cause heard  
for several days.

The cause standing this day in the paper of causes came on for the opinion of the Court.

THE COURT ordered, that so much of the order made on the hearing of this cause on the thirteenth day of *December 1770*, as directed that the original and amended bills, and the bill of revivor, and supplemental bill of complaint, filed by the said plaintiff *F. Yateman*, should be dismissed out of this Court, with costs, to be taxed for the defendants by the deputy remembrancer be affirmed; and that the sum of ten pounds, the deposit paid into court by the plaintiff, to abide the event of the re-hearing of this cause, be paid out to the defendants, or their clerk in court.

The decree dis-  
missing *Yate-*  
*man's* bill affir-  
med;

Now on the fourth of *February 1774*, upon hearing counsel for the defendants, praying, that the following order of THE HOUSE OF LORDS might be made an order of this Court, TO WIT, "*Die Mercurii*, the twenty-sixth of *January 1774*, after hearing counsel this day upon the petition and appeal of *F. Yateman*, gentleman, complaining of part of a decree of THE COURT OF EXCHEQUER of the thirteenth day of *November 1770*; and also an order of the said court of the twenty-sixth day of *November 1772*, affirming the same, and praying, that the same might be reversed, or that the appellant might have such other relief in the premises, as to this house should seem meet; and also upon the answer of *Sarah Cox*, and others, put in to the said appeal, and due consideration had of what was offered on either side in this cause; IT IS ORDERED AND ADJUDGED by the lords spiritual and temporal in parliament assembled, that the said petition and appeal be, and is hereby dismissed this house; and that the said decree and order therein complained of be, and the same are hereby affirmed. *ASHLEY COWPER, Clerk of Parliament.*" And

and the said de-  
cree affirmed in  
THE HOUSE OF  
LORDS.

THE COURT, upon reading the said order of THE HOUSE OF LORDS, ordered it as prayed.

### PEACOCK against GREENHILL.

*Essex. 9th July 1768.*

TRIN. TERM,  
8. GEO. 3.

THE bill stated, that *John Pickering*, deceased, was for twenty years before, and at his death, seised in fee simple, or of some other good estate in possession, of all that grange or manor

The plaintiff, as  
lay impropriator  
of *West Ham*, in  
*Essex*, claims the  
tithes of *Ham*  
*Fritb Farm*, in  
kind.

PEACOCK  
against  
GREENBILL.

Immo, p. 101  
et p. 102.

Immo, p. 101  
et p. 102.

Immo, p. 101  
et p. 102.

manor called *Wood Grange*, with all the rights, &c. situate in the parish of *West Ham*, in the county of *Essex*, and all those ten acres of meadow, lying in *Higbam's Mead*, and all those arable lands which were formerly woodlands, and had then late been grubbed up, and converted into tillage with their respective appurtenances in the said parish, to the said grange or manor belonging, containing sixty acres, and all those tithes of grain and hay to the rectory of *West Ham* belonging, or increasing from *Stratford Langthorne*, together with the tithes of *Clophams*, on the north side of the highway thereto to *Ham Frith*, and from *Stratford Langthorne*, on the south part of the highway, to the north part of *Green Street* and *Stratford Langthorne*, together with the tithes of *Westury*, to the parish church of *West Ham*, and from thence up to *Upton Cross*, and so by *Partway*, to the south end of the highway called *Green Lane* with their respective appurtenances, &c. in the parishes of *West Ham* and *East Ham*; that being so seised, he made and duly executed his last will, dated the seventeenth of *December* 1754, and thereby gave and devised his real estates at *West Ham* to his niece *Ann Machin*, for life, and after her decease to the plaintiff *Mary Peacock's* children, &c.; that the plaintiff *Mary Peacock's* mother, *Ann Machin*, on the death of the said *John Pickering*, entered on the premises, and enjoyed them until her death in the year 1758; that the plaintiff *Mary Peacock* then became entitled thereto; that she had ever since enjoyed the same; that previous to the marriage of *John* and *Mary Peacock*, the plaintiff *Mary*, by indenture, dated the twenty-fifth *September* 1765, made between them and the defendants *Coates* and *Cooper*, did assign, demise, &c. to the said defendants her real estates situate in *East Ham* and *West Ham*, to hold, &c. for ninety-nine years, &c. upon trust to permit her the said *Mary Peacock* to receive the rents, issues, and profits to her separate use; that the defendant *Greenbill*, for sixteen years past, had held lands and tenements, particularly fifty acres of arable land, parcel of a farm called *Ham Frith Farm*, in the several titheable places aforesaid; that the tithes of corn and grain, yearly arising therefrom, had of right belonged to the plaintiffs for eight years past, in kind, as tenant, farmer, or lessee thereof; that the said defendant had for many years occupied the said fifty acres of land, and had set out, rendered, and paid in kind to the plaintiff *Huddle's* father, who was lessee of the said tithes, and to the said plaintiff since his death, the tithes of the said premises; but that for three years past he had wholly substracted the same; and that the said tithes were of the yearly value of ten pounds. The bill therefore prayed, that the defendants *Coates* and *Cooper* might set forth what estate, right, and title they claimed to the said tithes; and that the defendant *Greenbill* might account with and pay to the plaintiffs, or to one of them, the single value of all titheable matters which had arisen on the said premises, in his occupation within the space of three years past.

The

The defendant *Greenhill*, as to so much of the bill as required him to discover the quantities, qualities, and values of the titheable matters which had arisen within the space of three years, and to account for and pay the plaintiffs, or one of them, the *single value* thereof, and as to so much as sought any relief against him concerning the same, pleaded in bar, AND FOR FLEA SAID, that the fifty acres in the bill mentioned to be in his occupation, and every part and parcel thereof, had been before, and at the times of the surrender and dissolution of the late monastery or abbey of *Stratford Langthorne*, parcel of the possessions and demesne lands of the abbots and monks or convent of the said abbey; that they were in the actual possession and occupation of the abbot and monks thereof; that the said abbey was one of the greater monasteries, and of the order of the *Cisterrians*; and that the said lands were held by the said abbot and monks or convent acquitted and discharged of the payment of tithes. The plea further stated, that the said abbot and monks or convent had been, for time immemorial, and were at the times of the surrender and dissolution thereof seised and possessed of the rectory and parsonage of the parish church of *West Ham*, and of the tithes in the bill mentioned; that the said abbot and monks or convent had been, for time immemorial, and were, at the times of the dissolution and the surrender thereof, seised and possessed of the said fifty acres of land, and then, and for time immemorial, had occupied the same; that they, on or about the eighteenth of *March*, in twenty-ninth year of the reign of *Henry the Eighth*, surrendered the said monastery or abbey into his hands; that it was, by an act made in thirty-first year of his reign, dissolved, and all the possessions thereof vested in the said king, his heirs, and successors; and that thereby the possessions and lands in their possession, and the said fifty acres became discharged from the payment of tithes. The plea further stated, that the said fifty acres of land were part of the *Ham Frith Farm*, and that the same, and every part thereof, were out of the bounds or districts from which the plaintiffs, by their bill, claimed to be entitled to tithes. The defendant then by his answer said, that he knew not, save by the bill, that *J. Pickering* was seised of the grange or manor called *Wood Grange*, with the appurtenances, or of all or any tithes of grain or hay to the rectory of *West Ham* belonging, from *Stratford Langthorne*, or the tithes of *Clopham's* or *Westney*, or from or to the boundaries, &c. in the said bill mentioned, or any of them, or of any messuages, lands, tenements, or hereditaments to the said grange or manor belonging, or of any other premises in *West Ham* or *East Ham*; but that he was, at his death, in possession of divers lands and tithes in the said county, and that some parts thereof might be lying in the said parishes. He also said, that he knew not whether *Ann Machin* had, on his death, entered on the premises; nor whether the

PEACOCK  
against  
GREENHILL.

The defend ne  
says, that the said  
lands were par-  
cel of the pos-  
sessions of the  
abbey of *Strat-*  
*ford Langthorne*,  
one of the great-  
er abbies, and of  
the *Cisterrian or-*  
*der*;

that it was held  
tithe free at the  
time the abbey  
was dissolved;

that the said ab-  
bey also held the  
pa rsonage of  
*West Ham*, and  
the tithes of *Ham*  
*Frith Farm*;

that the said  
farm is out of the  
titheable places  
belonging to the  
plaintiff;

and that the  
plaintiff is not  
seised of the  
impropriation as  
stated in the bill;



PRACOCK  
against  
GREENHILL.

the plaintiff *Mary* did, upon her death, become entitled to the same, nor whether she intermarried with the plaintiff; but that the plaintiff *Huddle* had frequently, against the defendant's will, taken and carried away some of his corn and grain arising on the said fifty acres, under pretence that he was entitled to the tithes thereof; and that he the defendant had, ever since *Michaelmas* 1763, prevented him from so doing, and had not paid him any composition, on account of tithes since.

The plea was argued and over-ruled.

that the said  
lands descended  
to *William* and  
*Mary*;  
that they granted  
them to *G.*  
*Booth*;

that *Booth* granted  
them to *Crop*  
and *Grigby* in  
trust;

that *Ham Fifth*  
*Farm* became  
vested in *Earl*  
*Tilney*;  
that the *Earl* de-  
voted them to  
him.

The defendant, by his further answer, said, that the said monastery, &c. and particularly the said fifty acres descended to *William* and *Mary*, as heirs and successors of *Henry the Eighth*; that by a grant under THE GREAT SEAL, dated the fifteenth of *June* 1754, they granted to *G. Booth* all that the manor of *West Ham*, and divers lands, &c. in the said county, and the said fifty acres, to hold to him, his executors, &c. for nine-nine years, from the death of her majesty; that she died the twentieth of *December* 1705, and by indenture, dated the first of *June* 1720, between the said *G. Booth* of the first part, *A. Crop* and *J. Grigby* of the second part, and *J. Blount* of the third part, the said *G. Booth* granted and demised the said fifty acres, to hold to the said *A. Crop* and *J. Grigby*, their executors, &c. from the twenty-sixth of *June* 1733, for sixty-nine years, in trust for the said *J. Blount*, his executors, &c.; that by an act of parliament, made the seventh year of *George the First*, intituled, an Act for raising Money upon the Estates of the late Sub-governor and other Officers of THE SOUTH SEA COMPANY, &c. the estate and interest of the said *A. Crop*, *J. Grigby*, and *Sir J. Blount*, in the said fifty acres, vested in trustees for the purposes in the said act mentioned, with power to sell the same; that by virtue of some of the trustees, the said fifty acres vested in *John Earl of Tilney* for the residue of the said term; that, by indenture, the twenty-second of *May* 1754, the *Earl* demised the said fifty acres to the defendant, his executors, &c. for fourteen years, from *Michaelmas* then next, and that he had ever since been in the possession thereof; that upon the expiration of the said *G. Booth's* grant, the said premises would become the possessions of THE CROWN. The defendant also said, that the said fifty acres of land were in the *Ward of Ham*, or *Church Street*, being one of the three districts into which the parish of *West Ham* is divided, and not in the ward of *Stratford*, one other of the said districts, and he submitted to the Court, that as the plaintiffs were not entitled, as he contended, to tithes of the said fifty acres, they were not entitled to any discovery of the quantities and values of the titheable matters in the bill mentioned.

The

The defendants *Cooper* and *Coates*, by their answer, said, that by indenture tripartite, dated the twenty-fifth of September 1765, made previous to the marriage of the plaintiffs *Peacock*, they were named trustees for the benefit of the plaintiff *Mary*, and were ready and willing to act in such trust, as the Court should direct, being indemnified and paid their costs, and were willing, that the plaintiffs, or some of them, should receive the tithes demanded by their bill for their own benefit, they, the defendants, not claiming any right thereto, otherwise than as trustees.

PEACOCK  
against  
GREENHILL.  
The trustees an-  
swer.

The plaintiffs replied to the defendant *Greenhill's* plea and answer; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides, and reading a grant, under THE GREAT SEAL, dated the twenty-eighth of February, in the third year of *Charles the First*, to *George Earl of Totness*, his heirs and assigns of all the tithes of grain and hay to the rectory of *West Ham* belonging, growing, coming, or renewing out of *Stratford Langthorne*, together with the tithes of *Clophams*, on the north part of the highway there to *Ham Frith*, and from *Stratford Langthorne* aforesaid, on the south part of the highway to the north part of *Green Street* and *Stratford Langthorne* aforesaid, together with the tithes of *Westney*, as far as the parish church of *West Ham*, and from thence to *Upton Cross*, and so by *Portsway* to the south end of the highway called *Green Lane*, with every of the appurtenances; and reading the will of the said *John Pickering*, dated the seventeenth of December 1754; a survey from the office of augmentation, being the grant from *William and Mary* to *G. Booth*, his executors, administrators and assigns, dated the fifteenth of June 1694; divers proofs taken in the cause; and on full debate of the matter;

The cause  
heard.

THE COURT ordered the bill to be retained for one year, and the plaintiffs, in the mean time, to be at liberty to bring an action at law, upon the statute, against *Greenhill* for the recovery of tithes by them demanded in their bill, in their, or in some or one of their own names, or in the names of the defendants *P. Coates* and *W. Cooper*, the said trustees.

The bill retain-  
ed for a year.

The bill was, by several orders, further retained; and on the nineteenth of November 1770, upon counsel for the plaintiff informing the Court, that the plaintiffs *Peacock* had brought an action against *Greenhill*; that the same had been tried; that the plaintiffs had obtained a verdict therein for ninety pounds, being the treble value of the said tithes for three years after the rate of seven pounds, ten shillings, *per annum*; that the plaintiffs had agreed to accept, and the defendant *Greenhill* had submitted to pay his said tithes for the said years, at the rate of seven pounds ten shillings *per annum*; and that the said plaintiffs were satisfied

The plaintiff re-  
covers in an ac-  
tion at law.

PEACOCK  
against  
GREENHILL.  
The tithes de-  
creed.

satisfied for the said tithes for 1770; and on reading the order, *posse*, and verdict: and hearing counsel for the defendant;

THE COURT ordered and decreed, that *J. Greenhill* do pay to the said plaintiffs, or one of them, twenty-two pounds, ten shillings, for his tithes for the years 1767, 1768, and 1769, after the rate aforesaid, and their costs of this suit to be taxed by the deputy remembrancer.

MICH. TERM,  
II. GEO. 3.

GREENHILL against PEACOCK.

*Essex*, 19th November 1770.

The plaintiff  
*Greenhill* says,  
that he holds  
*Ham Frith Farm*,  
in the parish of  
*West Ham*, in *Es-*  
*sex*, as tenant for  
years to *Earl*  
*Wilney*;

that the said  
farm was parcel  
of the abbey of  
*Stratford Lang-*  
*thorne*, and tithe  
free;

THE bill stated, that by lease dated the twenty-second of May 1754, *John Child, Earl of Tilney*, demised to the plaintiff, amongst other premises, fifty acres of land in the parish of *West Ham*, in the county of *Essex*, parcel of *Ham Frith Farm*, to hold to him, &c. for fourteen years; that he entered upon the said premises; that he had enjoyed them ever since; that the *Earl* had lately demised to him a further term of fourteen years in the said premises; that, soon after his entering upon the said premises, he was applied to by *Ann Machin*, or her lessee, who claimed to be entitled to the tithe of corn, grain, and hay arising from the said fifty acres of land, to set out the tithes thereof; that he, conceiving that tithes were due of common right, as the former tenant of the said premises had paid the tithes, did thereupon pay the same to the said *Ann Machin* to her death; that, after her death, he permitted the defendant *Mary Peacock* to receive the same; that lately he had been informed, that the said fifty acres were exempt from the payment of tithes; that thereupon, on recourse had to divers records, he discovered that the said fifty acres were before, and at the time of the surrender and dissolution of the late monastery or abbey of *Stratford Langton*, otherwise *Stratford Langthorne*, part and parcel of the possessions and demesne lands of the abbot and monks, or convent of the said monastery or abbey, and that they also had been for time immemorial, and were at the times of the said surrender and dissolution thereof, in the actual possession and occupation of them, and also were at the surrender and dissolution, and for time immemorial had been held by them acquitted and discharged of the payment of tithes; that it was one of the greater monasteries, and of the *Cistercian* order; that the said abbots and monks, for time immemorial, had been, and were at the surrender, seised and possessed of the rectory and parsonage of the parish church of *West Ham*, and of the said fifty acres, and then had occupied the same acquitted and discharged of the payment of tithes; that they, on the eighteenth of *March* in the twenty-ninth year of *Henry the Eighth*, surrendered the same into his hands; that by act made in the



thirty-first year of his reign, it became vested in him; that he being seised thereof, and of all the lands, &c. and particularly of the said fifty acres, freed and discharged from the payment of tithes, the same descended to *William and Mary*, as heirs, &c.; that they, on the fifteenth of *June* 1694 by grant, demised to *G. Booth* the said manor of *West Ham*, and all that wood and wood ground called *Ham Frith*, of which the said fifty acres was part, and the ground and soil of the same wood, and all trees and underwoods thereupon, to hold, after the queen's death, for ninety-nine years; that under and by virtue of several mesne assignments from *G. Booth* and others, and an act of parliament, made in the seventh year of *George the First*, it was vested in *Earl Tilney* for the residue of the said term; and that, on the expiration thereof, it reverted to THE CROWN. The bill therefore prayed, that the defendants might set forth their title to the tithes of corn, grain, and hay arising on the said fifty acres, and how they derived such title; that the said fifty acres of land might be declared free and exempt from the payment of tithes, or at least to the said defendants and each of them; and that the defendants might account with and pay to the plaintiff all such sums of money and the value of such tithes as they had received, in respect to the said fifty acres of land, and the produce thereof.

GREENHILL  
against  
PEACOCK.

and that it be  
came vested in  
*Earl Tilney*;

and prays, that  
the defendants  
may discover  
their title there-  
to; and pay  
back the tithes  
that had been re-  
ceived.

The defendants *Peacock* and his wife, as to so much of the bill as sought a discovery of their title to the tithes of corn, grain, and hay arising on the said fifty acres of land, other than from and under the grant dated the twenty-eighth of *February*, in the third year of *Charles the First*, in the bill brought by them against the said plaintiff and others; and as to so much as sought to impeach the defendant's title to the said tithes under the said grant, and a discovery how they derived their title to the tithe of the said fifty acres of land; and as to so much as prayed that the court would declare the said fifty acres of land to be free and exempt from the payment of tithes, at least to the defendants, demurred in law; AND FOR CAUSE OF DEMURRER shewed, that it appeared, on the plaintiff's own shewing by his said bill, that he disputed and controverted the defendant's right to the tithes of corn, grain, and hay, of that part of the parish of *West Ham* within which the said fifty acres of land lie, and denied the right of the defendants to the said tithes, and yet, by the same bill, sought to have the said fifty acres of land declared by the Court, as against defendants, to be exempt from the payment of tithes and to have such exemption established against the defendants, whereas it was inconsistent by one and the same bill to deny the defendant's right to the tithes, and at the same time to pray to have an exemption established against the defendants; and they prayed the judg-

The defendants  
demur to so much  
of the bill as  
prays a discove-  
ry, &c.;

and assign  
causes of de-  
murrer.

GREENHILL  
against  
PEACOCK.

ment of the Court whether they ought to make any further answer to so much of the said bill as before demurred to.

The defendants, to the residue of the said bill not demurred to, said, that they knew not, otherwise than by the bill, whether *the Earl of Tilney*, by indenture of lease, demised to the plaintiff, amongst other premises, the said fifty acres of land, parcel of *Ham Frith Farm*, or whether he had enjoyed the same ever since, or whether *the Earl* granted a further term.

Demurred over-  
ruled.

The defendants  
state their title  
to the tithes.

The said demurrer was argued and over-ruled.

The defendants, by their further answer, said, that his late majesty *Charles the First*, by his letters patent dated twenty-eighth of *February*, in the third year of his reign, reciting, that by an indenture of lease, dated the tenth of *January*, in the fourteenth year of *James the First*, the said king, and several other persons therein named, had demised to *Sir F. Bacon* the lands called *Wood Grange*, to hold to him, &c. for ninety-nine years; and also reciting, that by an indenture, dated the twenty-sixth of *January* then last, *Sir John Walker*, and others, had assigned over the said grange or manor, and all other the lands, tithes, and hereditaments to *George Earl of Totness*, for the remainder of the said term, did ratify and confirm the same to the said *Earl* for the residue of the said term; that his said majesty did, by the said letters patent, further give and grant to *the Earl*, &c. for ever, his majesty's reversion and remainder in the said grange, and all the premises, by the said indenture of the twenty-sixth of *January* aforesaid granted, as in the said answer was fully stated; that all the said grange, &c. by the said letters patent granted as aforesaid, had, by divers mesne conveyances, become vested in *Simon Burton*, &c.; that they, by indenture of lease and release dated the twenty-sixth and twenty-seventh of *September* 1738, in consideration of six thousand and eighty-seven pounds, granted to *J. Pickering*, and his heirs, the said grange or manor, &c. to hold to him, &c. for ever; that he, by will dated the seventeenth of *December* 1754, gave and devised his real estates at *West Ham* and *East Ham* to *T. Tindall* and another, in trust, to permit his niece *Ann Machin*, late mother of the defendant *Mary*, to receive the rents of the said premises for her life, and after her death to the use of her niece *Mary* during her life, and after her decease to the use of all and every the children of her, &c.; that he died seised thereof; that *Ann Machin* was also dead; that the defendants claimed title to the tithes of corn, grain, and hay growing and arising on the said fifty acres of land under the said grant, conveyances, and will; and that they did not believe that the said fifty acres were, before and at the time of the dissolution of the aforesaid monastery, discharged of tithes. They admitted, that the said monastery was a greater monastery; that it was surrendered to *Henry the Eighth*

*Eighth*; and that his present majesty was seised in fee of *Ham Frith*; but they said, that *Ham Frith Farm* never was part of the possessions thereof; and denied that the said fifty acres of land were parcel of the said farm; but admitted, that *the Earl of Tilney* had made such lease, and granted the plaintiff such further term. They said, that they believed that the said *Ann Machin* received the tithes of corn, grain, and hay arising on the said fifty acres until the time of her death; and that the defendants, in right of the said *Mary*, had received the said tithes till 1762, since which time the plaintiff had refused to set out or pay the same; but they insisted, that by virtue of the said grant, conveyances, and will, the said *Ann*, in her life-time, was well entitled to the said tithes; and that since her death the defendants *Peacock* were well entitled to the same.

GREENHILL  
against  
PEACOCK.

The defendants *Coates* and *Cooper*, by their answer, said that a marriage had been agreed upon between the defendant *J. Peacock* and *Mary* his now wife; that by indenture, dated the twenty-fifth of *September* 1765, they were appointed trustees to the said *Mary*; and that they claimed no other estate than as such, and hoped that they should be indemnified by the Court, and paid their costs of suit.

The plaintiff replied to the defendant *Peacock's* answer; and they rejoined; and witnesses were examined on the part of the plaintiff only; and upon hearing counsel on both sides;

THE COURT ordered the bill to be dismissed, with costs.

The bill dismissed.

PARKER, *Chief Baron*,  
ADAMS, *Baron*,  
PERROTT, *Baron*.

# SHAW against ROBINSON.

*Lincolnshire*, 28th *January* 1771.

HILARY TERM  
11. GEO. 3.

THE plaintiff, as rector of *Wyberton*, in the county of *Lincoln*, stated, that he was in *October* 1743 lawfully instituted and inducted therein, and had thereby become entitled to all tithes, both great and small, arising in the parish; that the defendant, at *Lady Day* 1763, had entered into the possession of a farm and land therein, together with a right of common on a very fertile and extensive common; that he soon afterwards paid tithes of the lambs which he fed on his pastures, and on the said common, and the wool thereof; that in the year 1763, he had mowed several acres of land; that he had in the summer, and in other parts of the said year, fed and depastured upon other part of his farm, which was not mowed, several bullocks, heifers, steers, and other dry and unprofitable cattle, together with a great number

The rector of *Wyberton*, in *Lincolnshire*, claims the tithes of hay, lambs, sheep, milk, calves, and the agistment of cattle.



SHAW  
against  
ROBINSON.

ber of sheep and ewes; that he had also had a number of lambs dropped on the said farm; but that he had, on pretence of *modus*, refused to pay the tithes of the said several titheable matters and things. The bill then charged, that there was no *modus* or custom within the parish, except one, which extended only to such lands as were usually mowed for meadow, and the hay thereof made use of and spent in the said parish; that the said *modus* was received in discharge of tithe hay, to which tithe the plaintiff was entitled, from all the lands mowed in the parish for the support of the cattle and stock belonging to such farm; that it did not extend to the summer eaten pasture land; but that for all such land so summer eaten, and fed by dry and unprofitable cattle, he was, as rector, entitled to be paid for the agistment of all such cattle, and also for the agistment of the after grass or eddish, for the stock depastured thereon. The bill further charged, that the defendant, during the whole of the year 1764, had occupied the said farm and lands, and had mowed several acres thereof; that he had fed and depastured on such land many sheep, oxen, lambs, young horses, and other kinds of dry and unprofitable cattle; that the plaintiff was entitled to the tithes of the lambs and of the wool of such sheep and lambs as had been shorn and dropped in the parish, and also of the dry and unprofitable cattle fed and agisted upon the said lands; but that the defendant had refused to pay the same, or any part thereof, although the tithe of wool and lambs was usually paid about *Midsummer* in every year, he insisting, that the plaintiff was only entitled to a *modus* for all such grass land, after the rate of twopence an acre; but the plaintiff insisted, that such payment of twopence an acre was for the cut of grass or hay, only for such lands as were mowed, and the produce spent and consumed in the parish; and that the custom did not extend to summer eaten lands, or lands not mowed, and that the plaintiff ought to be paid the agistment tithe for land not mowed, but summer eaten and fed by dry and unprofitable cattle. The bill further charged, that in the year 1764, the defendant had occupied several acres of land newly inclosed by act of parliament; that he had fed sheep and cattle thereon; but that he had refused to pay the tithes thereof, although the said act expressed the same to be liable to the payment of tithes. The bill therefore prayed an account for the several titheable matters aforesaid; for the agistment of all dry and unprofitable cattle; and for lambs, wool, and other tithes.

The defendant  
says that there  
are *modus* for  
lambs;

The defendant admitted, that the plaintiff was rector, and insisted on the following *modus* of tithing lambs, milch cows, heifers, foals, calves, and hay, viz. that every person inhabiting the parish, having any lamb or lambs yeaned or brought forth therein, had immemorially paid to the rector, in lieu of the tithes of such lambs at *Midsummer Day*, old stile, or

SHAW  
against  
ROBINSON.

as soon after as required, the several sums of money following, TO WIT, for any number of lambs, under seven, twopence a-piece of *British* money; for seven lambs and no more, one lamb, the rector paying to the owner, at the delivery thereof, the sum of sixpence; that when any inhabitant had eight lambs, and no more, in one year, then one lamb, the rector paying fourpence; and when nine lambs and no more, then one lamb, the rector paying twopence; and when ten lambs, then one lamb; AND ALSO that every inhabitant of the parish, having milch cows therein, had immemorially paid to the rector fourpence for every such milch cow on *Monday*, in *Easter Week*, or as soon after as demanded, in lieu of the tithes of such milch cow and her milk, from the *Easter Monday* in the preceding year; AND ALSO one penny for every colt or foal foaled; and twopence for every calf on *Easter Monday* as aforesaid; AND ALSO that every person inhabiting the said parish had immemorially paid to the rector on *Monday*, in *Easter Week*, for every acre of meadow or pasture ground, the sum of twopence, in lieu of the tithes of all hay arising in the preceding year, and after the same rate for any greater or less quantity than an acre of meadow or pasture ground; AND ALSO in lieu of tithes of agistment of all barren and unprofitable cattle depastured upon the after pasture of the same meadow or pasture ground; AND ALSO that every person inhabiting the said parish, having any sheep shorn and depastured therein on or at any time before the feast day of *the Purification*, old stile, had immemorially delivered to the rector, at the time of shearing such sheep, the full tithes in kind of the wool of all such sheep shorn in the parish, notwithstanding such sheep had been brought into the said parish, at any time or times after the same were shorn in the preceding year, so as they were brought into the same parish, upon or at any time before the said feast day of *the Purification*, old stile, as aforesaid; AND THAT every inhabitant, having any sheep brought into the parish after *the Purification*, and shorn therein, had immemorially paid to the rector tithes for the wool and agistment of the said sheep, so brought into the parish, after the feast day, old stile, as aforesaid, in the following manner, TO WIT, for all such sheep as were shorn in the parish, one fleece of wool, to be delivered at the time of shearing such sheep to the rector; for every hundred sheep, reckoning six score to the hundred, for every month they were so depastured or kept within the parish, and after the same rate for any greater or less number of sheep than a hundred, and for greater or less time than one month, in lieu of the tithes of the wool and agistment of such sheep; AND THAT for all such sheep as were brought into the said parish by any the inhabitants thereof, at any time after such feast day of *the Purification* as aforesaid, and not shorn therein, but removed thereout before shearing season, the sum of threepence

milch cows;

colts, calves, and  
foals;

meadow land;

after-pasture;

sheep;

SHAW  
against  
ROBINSON.

wood;

Easter offerings;

mortuaries;

out-dwellers;

for each sheep had immemorially been paid to the said rector on *Monday in Easter week*, next following the time when such sheep were removed out of the same parish, or as soon after as lawfully demanded, in full satisfaction of the tithes of wool and agistment of such sheep so brought into the said parish after the *Purification*, and removed out of the same parish before shearing season; AND ALSO that every inhabitant, occupying any lands or tenements in the parish, had paid to the rector three halfpence on *Monday in Easter week* yearly, in full satisfaction for the tithes of all wood and thorns, and plashing of hedges, in or upon such lands or tenements growing, felled, or cut from *Easter Monday*, in the preceeding year; AND ALSO that the sum of twopence was annually due on *Easter Day* to the rector, from every communicant, for an *Easter offering*; AND ALSO that mortuaries were due to the rector from persons inhabiting and dying in the parish, *to wit*, ten shillings, where the personal estate of the deceased amounted to fifty pounds, or upwards; six shillings and eightpence, where it was under the value of fifty pounds, but of the value of thirty or upwards; and three shillings and fourpence, where it was under the value of thirty pounds, but of the value of fifteen pounds and upwards; AND ALSO that there was payable one other certain *modus*, after the rate of tenpence an acre, for meadow and pasture ground lying in the parish, and occupied by persons dwelling out of the same parish; AND ALSO that the rector was entitled to such great and small tithes, yearly arising in the parish, as were not comprehended under the several species of tithes, in satisfaction whereof such *moduses* were payable, and to no other tithes, great or small, nor to any other dues, offerings, or payments whatever. The defendant admitted, that he had entered into the possession of the said meadow and pasture lands in *Wyberton*, at *Lady Day* 1763, together with a farm house and right of common thereto belonging, on a large common called *Holland Fen*; and that he mowed and cut hay from off some of the lands; but he said, that the said *modus* of twopence an acre did not extend to the summer eaten pasture land. He also admitted, that for all such land as was summer eaten, and fed by dry and unprofitable cattle, belonging to any person or persons actually dwelling in the parish, the plaintiff, as rector, was entitled to be paid for the agistment of all such cattle, subject nevertheless to such *moduses* for colts or foals, and calves as aforesaid. He also admitted, that there was due from him to the plaintiff, four shillings and fourpence and no more, for the said *modus* of twopence an acre, for the tithe of hay mowed by him on twenty six acres of meadow or pasture ground lying in the said parish, and occupied by him in 1763; and of and for all tithes of dry and unprofitable cattle, fed or depastured upon the after pasture of the said land, four shillings, and tenpence, for the said *modus* in 1764. He further



SHAW  
against  
ROBINSON.

ther said, that in 1763 he had depastured upon his said farm four hundred and ninety sheep, but no lambs, and had also in the same year divers barren, unfruitful, and feeding beasts, all which he set forth in his answer, together with the times and values of each. He admitted, that in the said year he had upon his eddish or after pasture lands several oxen, the agistment whereof upon the said eddish was worth two shillings a week each; but he denied, that any tithes were due for the said oxen so kept thereon, and insisted that the same were exempted from the payment of tithes in kind, by the aforesaid *modus* of twopence an acre. He said, that in the year 1764, he had depastured on his said farm five hundred and ninety sheep, and eight lambs, the tithes of which lambs he had offered several times to pay, but that the plaintiff had refused to accept thereof. He admitted, that he had not paid tithes for his wool for the said year, but said, that he had offered them to the plaintiff according to the usual customs in the parish, but that the plaintiff had as often refused to accept them, and had demanded every tenth fleece of wool, which he clipped or sheared in the parish. He admitted, that the usual time for tithing wool there was at shear day, and for lambs at *Midsummer Day*, old stile. He said, that in the said year he had depastured on his farm divers barren and unprofitable cattle, and enumerated the same, together with the times, numbers, and values, all which he said had been fed upon the summer eaten pastures and herbage thereof, and were worth one shilling and threepence a week each ox; that in the same year he fed upon his eddish or after-pasture several oxen, the agistment of which was worth two shillings a week for each ox, but denied, that any tithes were due for cattle so kept on the said eddish as aforesaid; and insisted, that the same were exempt from payment of tithes in kind, by the said *modus* of twopence an acre as aforesaid. He also said, that the said *modus* of tenpence an acre, with regard to out dwellers extended to grass lands, whether eaten or mowed; but that the said *modus* of twopence an acre did not extend to such lands as were summer eaten and not mowed. He admitted, that he had paid no tithe for his wool and lambs for 1764, but said that he had been always ready, and still was ready to pay them. He also said, that the plaintiff was entitled to such offerings, oblations, and obventions, as was therein set forth, and to surplice fees, and no other; and that he had never refused the payment thereof, but on the contrary had offered the plaintiff such tithes before filing his bill. He also said, that such tithes for sheep and lambs, whether fed or depastured upon after-grass or eddish, or in any other manner within the said parish, were paid by the parishioners or inhabitants thereof in such manner as before set forth; and that no other tithes were due for the same, except that persons, not living within the parish, did not pay tithes for sheep or lambs,

that the *modus* as to out dwellers extends to grass lands, whether eaten or mowed.

SHAW  
against  
ROBINSON.

or any stock fed on meadow or pasture lands, whether kept on eddish or after grafs, or not, but were exempt from such and all other tithes, for or in respect of meadow and pasture ground, by the payment of the said *modus*, after the rate of tenpence an acre, to the rector of the said parish for the time being, his tenant, or deputy, on *Easter Monday* yearly. He also said, that the after-grafs or eddish, and the grafs or hay mowed therefrom, when the same was fed or depastured with dry or unprofitable cattle, was not liable to the payment of any tithe or agistment for such beast, ox, or head of cattle fed thereon. He denied, that in the said year he had occupied any land then lately inclosed by act of parliament, or that he had threatened to bring an action against the plaintiff for carrying corn, grafs, or hay of the defendants, as or for tithes in kind, or that he had any corn growing on any lands in the said parish, except three acres; and he admitted, that the plaintiff never carried away any grafs or hay from any land in his occupation. He said, that he had computed all his titheable matters due to the plaintiff for the said two years, and that the same amounted to no more than twenty-three pounds, seventeen shillings, and fourpence halfpenny, which he was ready, and thereby offered to pay to the plaintiff whenever he would accept the same, and submitted to account for all his tithes, customary payments, and offerings, and to pay what should appear to be due thereon; but he insisted, in such accounts, to have the benefit of the several *modus*es in his answer set forth, except the *modus* of tenpence an acre, payable by persons inhabiting out of the said parish, for meadow and pasture ground by them occupied in the parish, to the benefit of which last mentioned *modus* he admitted that he was not entitled, as he had constantly inhabited within the parish during the time enquired after by the bill.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel; and reading the bill and answer, and the deposition of several witnesses as to the tender in the answer mentioned;

The *modus*es for  
hay, agistment,  
wool, and sheep  
decreed.

THE COURT ordered the deputy remembrancer to take an account of what was due for the tithes of hay, according to the *modus* of twopence an acre for land mowed; of what was due for the agistment of barren and unprofitable cattle on the pasture lands; of what was due for the tithes of wool, in kind, for sheep brought into the parish before *Candlemas*, and shorn there; for sheep brought into the said parish after *Candlemas*; and also for lambs, according to the several *modus*es set forth in the answer, with costs, to the time of the filing the answer; the said deputy remembrancer to state and report the circumstances of the tender, in the an-

swer mentioned, as the same stood at that time; and whether the tender then made was sufficient: further directions to be reserved until after report.

Shaw  
against  
ROBINSON,

PARKER, *Chief Baron.*  
SMYTHE, *Baron.*  
ADAMS, *Baron.*

CARTER *against* ANDERSON,

HILARY TERM  
11. GEO. 3.

*Lincolnsbire, 20th February 1771.*

THE rector of *Broughton*, in the county of *Lincoln*, claimed the great and small tithes of the parish, and particularly the tithes of corn, grain, hay, wool, lambs, milk, calves, pigs, turkies, geese, ducks, and other poultry, eggs, agistment, and wood, from *Lady Day* 1764.

The rector of *Broughton*, in *Lincolnsbire*, claims the tithes arising in the hamlet of *Manby*, in the said parish in kind.

The defendant admitted, that the plaintiff was rector, and entitled to the several species of tithes insisted on by his bill, except as after mentioned. He also admitted, that he had occupied in the hamlet of *Manby*, in the said parish, a messuage with a yard and gardens, and several closes of land as specified in his answer, being one hundred and fifty acres, at seventy-three pounds, fourteen shillings a-year; and that he also occupied *Long Close*. He insisted, that the hamlets of *Manby* and *Gogriell* were distinct hamlets in and adjoining to the parish of *Broughton*; and that no tithes in kind, arising from any titheable matters in the said hamlets, were due and payable to the plaintiff, but that the yearly sum of twenty-two pounds had immemorially been paid to the rectors of *Broughton*, and by them accepted as a *modus*, in lieu of all manner of tithes arising within the said two hamlets, or either of them; that the plaintiff, from the time he had become rector of the said parish until *May* 1764, had taken and accepted the aforesaid sum, in lieu of all manner of tithes arising in the said two hamlets or either of them; and that he had offered to pay him the tithes that were then due to him, but that he had refused to accept the same. He admitted, that since that time he had yearly on his said land the several titheable matters as charged in the bill; and that he had not set out or paid the tithes in kind thereof, but had wholly substracted the same as he had a right to do, the lands lying in *Manby*, and the said *modus* having till then been immemorially paid for the tithes arising within the said hamlets.

The defendant says, that the yearly sum of 22l. had been immemorially paid to the rector of *Broughton*, in lieu of all tithes arising in the hamlets of *Manby* and *Gogriell*, or either of them, and that the lands he occupied are in the hamlet of *Manby*.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel;

The cause heard.

The



CARTER  
against  
ANDERSON.

The plaintiff's counsel objected to the *modus* insisted on by the defendant in his answer, because it was not therein sufficiently expressed by whom the said *modus* was to be paid.

The objection allowed, and the defendant decreed to account for tithes in kind, but without prejudice.

The plaintiff says the *modus* is badly stated, it not being said by whom it was to be paid.

The Court, on hearing the defendant's counsel in support of the *modus*, allowed the objection, and ordered the deputy remembrancer to take an account of what was due for the tithes demanded by the bill, but without prejudice to the defendant hereafter setting up the said *modus*, if he should think fit so to do; and that the defendant do pay the plaintiff his costs.

HILARY TERM  
11. GEO. 3.

WILLIS, D. D. against FROTHERINGHAM.

Lincolnshire, 22d February 1771.

The vicar of *Holbeach*, in *Lincolnshire*, claims the agistment tithes of barren cattle, and 1½d. a-month for sheep fed, after they have been sheared and sold off before the next shearing day.  
See 2. Rayn. 570.

THE vicar of *Holbeach*, in the county of *Lincoln* (a), stated, that the vicars of the said parish were entitled to three acres and an half of arable land, which the rectors of the said church had enjoyed as *glebe land* before the appropriation of the church to the bishopric of *Lincoln*; to all customary payments in lieu of tithes of hay and wool, to all small tithes, and to all other revenues, profits, and oblations whatsoever, except only the tithes of corn, wool, lambs, flax, and hay, that were payable in kind, the same belonging to the bishop, in right of his bishoprick; and demanded three halfpence a month for the tithes of depasturing of sheep fattened on the defendant's lands from the time they had been sheared until they were taken away and sent to the *London* or other markets for sale before the next shearing time; and also the agistment tithes of other unprofitable cattle from the twelfth of *May* 1750.

The defendants set up a *modus* of 4d. a-head for barren beasts and milch cows; ½d. for a calf; and 3d. for a foal

The defendants set up the following *moduses*, TO WIT, fourpence a head for beasts fed at grass and sold off fat, payable at *Easter* following the sale thereof; fourpence a-head for every milch cow, payable at *Easter*; one penny a-head for every calf dropped, payable at *Easter*; threepence a-head for every foal dropped, payable at *Easter* following the dropping thereof; and stated, that they had been immemorially paid to the plaintiff and his predecessors, in lieu of the tithes of such fatted beasts, milch cows, calves, and foals. They further stated, that the plaintiff had constantly taken five shillings of *Frotheringham*, in lieu of all tithes of what kind soever, including the said *moduses* due from him up to *Easter* 1767, and six shillings of *Wheldall*. They admitted, that an agistment tithe was due to the vicar for sheep kept after they were clipped until fatted and removed off the lands, whether for

and say, that they had compounded to *Easter* 1767;

that they had kept no account of the number of sheep fed for sale;

(a) See *Peirson v. Hoskerton*, vol. 1. page 380. *Hankin v. Gay*, vol. 2. page 84. *Hankin v. Frotheringham*, vol. 2. page 184. and *Willis v. Frotheringham*, ante page

sale or for any other purpose, but said that they had kept no account thereof, not apprehending that they should ever be called upon for the same.

WILLIS  
against  
FROTHERING-  
HAM.

The defendant *Frotheringham* said, that he generally sent away his fatted sheep after shearing, by fifteen in number, as it suited him; that all his sheep had been upon an average kept upon his lands about three months after they were shorn; that he usually sheared his store sheep about the fourth of *July*, and those he intended to fatten for sale about the eighteenth of *July* in every year; that from the shearing time in each year he had removed one hundred sheep, which had continued upon his lands eight or nine months after they were shorn, to other lands occupied by him in an adjoining parish; that during the greater part of that time, the impropriator of the parish had demanded of him, and received the tithe wool of such sheep so removed, or a compensation in lieu thereof on account of their continuing in the said parish each year after *Candlemas*.

that they had in every year been partly fed in another parish;

The defendant *Wheldall* said, that he had sent to market from off his lands several sheep in each year; that the said sheep had been kept upon his lands about two months after they were shorn; that he sheared his store sheep on or about the twenty-eighth of *June*, and those he sent for sale about the eighth of *July* in each year; that for the last four years he had removed yearly several sheep from off his lands to other lands which he occupied in another parish; that such sheep had continued therein seven months after they were shorn; but that he had always paid the impropriator so much money an acre as had been agreed upon between them, as a compensation in lieu of the tithes of wool and lambs, on account of such sheep having been kept in the said parish after *Candlemas* in each year.

that tithes had been paid for their agistment in such other parish;

Both the defendants said, that to the best of their judgment, as well as the opinion of the most eminent graziers in that country, the value of feeding sheep did not exceed fivepence a month; and that therefore the value of the tithe thereof could not exceed one halfpenny a month each sheep, which was one third less than the plaintiff claimed by his bill. They also said, that they did not feed more than six store beasts, six young beasts, and three young horses each year; that they had been often agisted in other parishes, or kept upon hay and straw for about six months; that they had not been fed upon the defendant's lands more than six months in each year; that the value of depasturing each beast was not worth more than one shilling and eightpence a-month if a store beast, and if a young beast, from one to two years old, one shilling and threepence a-month, and each young horse two shillings a-month.

that the value was not more than  $\frac{1}{2}$ d. a-month.

THE

WILLIS  
against  
FROTHERING-  
HAM.

The tithes of  
sheep and barren  
cattle decreed,  
with costs;

bill dismissed as  
to the *modus*: of  
4d. a head for  
barren cattle.

THE COURT, upon reading two receipts dated the fifteenth of July 1765 and the fifteenth of July 1766 from the plaintiff to the defendants, in lieu of all tithes, ordered the defendants to account for the tithes of the agistment of sheep depastured from the time they were last sheared until they were sold or taken away; for the agistment tithe of barren cattle, from the time *the compositions* had ended; for the costs of this suit, so far as the same related to the agistment of sheep and barren cattle; and that the bill, so far as it related to the *modus* of fourpence a head for a beast fed on grass and sold off fat, payable at *Easter* following the sale thereof, be dismissed with costs, as to that matter only.

PARKER, Chief Baron.  
ADAMS, Baron.  
PERROTT, Baron.

HILARY TERM  
11. GEO. 3.

SMITH against MAUNDRELL.

Wiltshire, 22d February 1771.

The rector of  
*Blackland*, in  
*Wiltshire*, says  
that the defend-  
ant was under  
composition for  
his tithes from  
*Michaelmas* to  
*Michaelmas*;  
that after *Micha-*  
*elmas* 1767, but  
before any tithes  
for 1768 had  
became due, he  
gave him notice  
that he would  
take his tithes  
in kind for 1768,  
and claims the  
tithe of milk,  
wool, lambs, and  
hay.

THE bill stated, that the plaintiff, about the year 1753, was duly instituted into the parish church of *Blackland*, in the county of *Wilts*, and had thereby become entitled to all the great and small tithes of the parish; that the defendant was owner and occupier of a messuage and land therein; that for seven years past, from *Michaelmas* 1759, he had regularly paid a composition for the tithes of the same; that soon after *Michaelmas* 1767, and before any tithes became due for the year 1768, he, the plaintiff, gave notice in writing to the defendant that he would take his tithes in kind for the year 1768; that on *Easter Monday* 1768, and for a few days afterwards, the plaintiff sent for and received some tithe milk, but that afterwards the defendant refused to let him have the tithe milk, because the same person who was at first appointed to receive it did not fetch it. The bill also stated, that the defendant having several lambs, he, the plaintiff, at the proper time sent for the tithe thereof, but was refused the same; that in the year 1768, on the day the defendant caused his sheep to be shorn, he, the plaintiff, sent his servant to receive the tithe wool, but that the defendant refused to pay the same, or to let his servant take it. The bill also stated, that the defendant, when he had cut the grass growing on his said farm, sent to the plaintiff's servant and told him to take the tithe of such grass; that the servant went to take it; and that the defendant then told him he should not have any tithes that year. The bill therefore prayed, that the defendant might account with the plaintiff, and pay him what should appear to be due for the said tithes,

The



The defendant admitted, that the plaintiff was rector, and entitled to all tithes; and he said, that he was owner and occupier of a messuage and lands in the parish; that about the twenty-fifth of February 1768, he received a notice in writing from the plaintiff, that for the time to come he would take his tithes in kind; that on *Easter Monday* he sent his servant for tithe milk; that the servant took and carried away the same, and afterwards came and regularly fetched away such tithe milk, several times, both morning and evening; but that another person coming afterwards, without the direction of the plaintiff, he had refused to deliver it to him. He further said, that the plaintiff did in proper time, in the spring season 1768, send to him for the tithes of his lambs fallen in that year; and that he had refused to set them out, he being advised, that the plaintiff had no right to them, as he, the defendant, had not kept or depastured any sheep in the said parish from *Michaelmas* 1767 to *Lady Day* 1768, save as aforesaid entioned, but had, during all that time, depastured his sheep on other lands of his in the parishes of *Colne* and *Compton Bassett*; and that none of the lambs, which he raised in 1768, were either begotten or yeaned, or did fall in the parish of *Blackland*; that the greater part of his lands in *Blackland* were low grounds, and in wet seasons liable to rot or bane the sheep; and that therefore he had not kept any of his sheep therein from *Michaelmas* 1767 to *Lady Day* 1768, save about fifty called *hog sheep*, of which forty-five became baned or rotted, and died; that about the twenty-fifth of *June* 1768, the day on which he had caused his sheep and lambs to be shorn, the defendant's servant came to his barn, and said he would take up the tithe of such wool for the plaintiff, provided he might take the full tenth part thereof; and that he, the defendant, told him, that if he would accept a half part of such tithe wool for his master's dues or share thereof, he might take the same. And he submitted whether the plaintiff was entitled to any more than one half thereof, by reason, and on account of his sheep not having been brought to or kept, fed, or depastured in *Blackland* in 1768, until and from the *Lady Day*, old stile, next before the said time of shearing. He admitted, that the plaintiff was entitled to the full tithes of the wool of his lambs sheared in 1768; but said, that by some mistake, it was not explained to the plaintiff's servant, that though he was refused any more than one half of the said tithe wool in general, yet that he might take the full tithe of the lambs wool in particular. He said, that in *June* 1768, he had caused the grass in *Lower Hill Mead* to be mowed for hay; and that in the evening of the same day, after the same had been so mowed, he sent his servant to the plaintiff to come the next morning by ten o'clock, by which time he had caused the said grass to be placed in cocks, and to see the tithes thereof duly set out; that he

attended

SMITH  
against

MAUNDRELL.

The defendant says, that he refused to deliver the tithe milk because the person who came for it did not shew his authority to receive it;

that he had not kept any lambs from *Michaelmas* to *Lady Day*;

or sheep, except fifty hog sheep, forty five of which died of the rot; that he had offered half the tithes of the wool of the said sheep and lambs;

that he had sent notice when the grass was in the cock, but that the plaintiff had refused to send to see it tithed, and that therefore he did not set the tithes out.

SMITH  
against  
MAUNDRELL,

attended for that purpose, and waited till two in the afternoon; but that no person came on the plaintiff's behalf; that to avoid losing the afternoon in the same manner as he had lost the morning, he ordered his men to throw abroad the said cocks of grass, and forward the same into hay; that the plaintiff's servant came at seven in the evening; and that he then refused to set out the tithe thereof. He also admitted, that he had mowed his other grass land, and had not set out the tithe thereof.

The cause  
heard.

The plaintiff replied; the defendants rejoined; and no witnesses being examined on either side;

The bill dismissed as to the tithe of lambs; and the tithes of milk, wool, and hay decreed.

THE COURT, upon hearing counsel on both sides, ordered the bill, so far as it respected the tithe of lambs, to be dismissed, with costs; and the deputy remembrancer to take an account of what was due for the tithes of the milk, wool, and hay, demanded by the bill, with costs, to be taxed, &c.

PARKER, *Chief Baron*.  
ADAMS, *Baron*.  
FERROTT, *Baron*.

HILARY TERM  
11. GEO. 3.

EYRE against GIBBERD.

Northamptonshire, 22d February 1771.

The rector of Plumpton, in Northamptonshire, is entitled to the tithes of the parish in kind.

THE rector of Plumpton, in the county of Northampton, claimed all the tithes, as well great as small, except the tithes of corn and grain, which the defendant had paid to him; and particularly the tithes of hay, cows, sheep, hogs, hens, wool, calves, lambs, pigs, eggs, fruit, garden-stuff, and other titheable matters which had arisen upon his lands in the year 1768.

The defendant admitted, that the plaintiff was rector, and said, that the whole parish was formerly the estate of *Francis Watson*; that he and his ancestors had immemorially paid a yearly sum of thirty-eight pounds to the rector, as or in the nature of a *modus*, in lieu of all manner of tithes, except for such lands as were from time to time in tillage, in respect whereof the rector was entitled to, and had accordingly received tithes in kind of all corn and grain growing thereon; that the estate, for which such *modus* was payable, consisted of the manor of Plumpton, the advowson of Plumpton, divers messuages and tenements, and about seven hundred and fifty acres of arable, meadow, and pasture land; that in the year 1666, the manor, the advowson, and three hundred and ninety-six acres were sold by him to *Richard Reeve*; that *R. Reeve*, in March 1680, sold and conveyed the same to certain persons in trust for *H. Moore*; that upon the division of the said estate, an apportionment was made of the said *modus*; that twenty-one pounds part thereof was agreed

agreed to be paid by *F. Watson* for such part thereof as remained unfold; that seventeen pounds, the residue, was agreed to be paid by *H. Moore* for such part as belonged to him; that such apportionment was confirmed by A TERRIER of the glebe land and tithes belonging to the rectory of *Plumpton*, exhibited in the registry of the *Bishop of Peterborough*, on the twenty-first of May 1684; that in the said terrier were contained two articles, viz. "tithes ITEM, for that part of the estate of *Sir F. Watson*, being pasture ground and woods, let at twenty-one pounds *per annum*;" that soon after the exhibiting the said terrier, he sold the residue of his estate to trustees for the benefit of *Jesus College*, in *Oxford*; that the said *modus* of thirty-eight pounds had been ever since received by the college, and by the owner of the premises so sold to the said *H. Moore*, in the said proportions, save only that at such times as any of the lands belonging to such estate had been in tillage, the values of the tithes of corn and grain grown thereon had been blended together with the respective proportions of such annual *modus*, and paid to the rector without making any distinction between them; and that such *modus* was never affected or disturbed by the manner in which the same was so blended with the value of the tithes in kind; that in a register book of the parish of *Plumpton*, there was an entry or memorandum in the hand writing of *Mr. Hiccocks*, rector of the parish, dated the eighth of June 1719, viz. "June 8th 1719, MEMORANDUM, Whereas the rector of *Plumpton* did, for several years past, receive for that part of the estate which was *Mr. Moore's*, but now *Mr. Busby's*, for grazing tithes the yearly sum of seventeen pounds, without any deduction for taxes or levies on any account whatsoever; and whereas this present year, by the instigation thereto of *Mr. Busby's* agent or bailiff, the assessors taxed the tithes three pounds, upon which account a bill was preferred in the exchequer by the rector, against the tenants of the estate, to oblige them to pay tithes in kind, and process was served accordingly; and it is this day agreed between *W. Hiccocks*, rector of the said parish, and *T. Wills*, agent for *Mr. Busby*, that the sum of seventeen pounds *per annum* shall be clearly paid to the rector for grazing tithes, for the future, without any deduction whatever;" that the said agreement was verbally made before several people named in the said answer; that in consequence of such repeated confirmations of the said *modus*, no tithes in kind, except of corn and grain, had ever been paid to the rector, but that such *modus* had constantly been paid to and accepted by him, in lieu of all tithes whatever arising within the parish, except as aforesaid. The defendant admitted, that he occupied part of the said estate, viz. one hundred and forty-nine acres, twenty-eight whereof were in tillage and the rest pasture; and that he made hay, kept cows, sheep, hogs, fowls, and had had wool,

ET  
against  
GIBBER.

milk,



EVER  
against  
GIBBEAD.

milk, calves, pigs, eggs, and other titheable matters on the said lands, which he converted to his own use, without setting out the tithes thereof, or making any other satisfaction, except as after mentioned. He further said, that he had constantly set out the tithes in kind of all corn and grain; and that on the seventh of *April* 1768 he had paid the plaintiff three pounds, fourteen shillings, and nine pence halfpenny, as and for half a year's amount of his proportion of the said *modus*, ending at *Lady Day* preceeding. He further said, that the residue of the said estate, covered by the said apportioned *modus* of seventeen pounds *per annum*, consisted, as he believed, of about two hundred and twenty-seven acres then in the occupation of *W. Edmonds*; that the same, being much the larger part of the *modus*, was paid by him and *W. Edmonds* in the following proportions, *viz.* seven pounds, nine shillings, and sevenpence by him, and nine pounds, ten shillings, and fivepence by *Edmonds*, making the said seventeen pounds. And he averred, that he had always been ready, and he offered by his answer, to pay the plaintiff all the arrears which had become due for and in respect of his share of the said *modus* of seventeen pounds *per annum* since *Lady Day* 1768; but he admitted, that he had, and that he did then refuse to make him any satisfaction for the tithes in kind arising from the pasture lands in his occupation, or for any other the titheable matters in the bill mentioned; and he insisted upon the said *modus*.

THE COURT, upon hearing counsel, and reading the proofs in the cause, ordered the deputy remembrancer to take an account of the several titheable matters and things demanded by the bill, except of corn and grain; and that the defendant do pay the plaintiff his costs of this suit.

PARKER, *Chief Baron.*  
ADAMS, *Baron.*  
PERROTT, *Baron.*

EASTER TERM,  
11. GEO. 3.

TOWNLEY against TOMLINSON.

*Lancashire, 25th April 1771.*

The plaintiff claims one undivided moiety of the tithes, both great and small, of the township of *Pilling*, in the parish of *Garstang*, in *Lancashire*.  
See ante, 31.

THE plaintiff claimed one undivided moiety of all the tithes of all corn, grain, hay, lambs, wool, flax, hemp, potatoes, and other titheable things, and *Easter* offerings, yearly arising in the township of *Pilling*, in the impropriate rectory and parish of *Garstang*, in the county of *Lancaster*, for three years past; and stated, that in *Hilary Term* 1759 she had filed her bill in this court for the same species of tithes against the defendants, and had

had obtained a decree; but that the defendants still refused to account (a).

The defendants denied, that the plaintiff was, to their knowledge, legally entitled to a moiety of the tithes and *Easter* offerings yearly arising in the said township, except by the manner in which she made out her title thereto in the former suit. They admitted, that they had, during three years, held lands in *Pilling*, and had sown thereon wheat, barley, oats, beans, and potatoes; but they denied, that all the said wheat, barley, oats, and potatoes, had been carried away without setting out the tithes thereof, or making the plaintiff any recompence for her moiety thereof; and said, that on the contrary, in the harvest of each of those years, they had severally and duly set out all the tithes of their said corn and grain; but they admitted, that they had taken and converted to their own use one-third of such tithes as their own right and property; and they insisted, that they were well entitled thereto by virtue of a certain exemption after mentioned; and that they had left the other two-third parts of such tithes for 1764 and 1765 for the plaintiff and the other owners thereof; and had given due notice to the tithe gatherers so that they might have taken away the same if they had pleased so to do; but that they had neglected to take the same away; and that the said tithes rotted on the ground; but that, for the year 1766, they had housed the same two-thirds for themselves upon agreements as the suit should be determined. They then stated, that the lands occupied by them in *Pilling* were of three different tenures, viz. that one undivided third part of such lands was held under leases for lives at small reserved rents; that one other undivided third part thereof was held under leases for a certain number of years at rack-rents; and that the remaining third part thereof was held by *R. Hesket* under leases for lives until the year 1747; that *R. Hesket* then conveyed the inheritance of his third part of and in the lands so by him occupied to them; that they had ever since held and occupied the same; and that being thus owners of the inheritance of such third part, and also occupiers of the whole, they were entitled to an exemption from payment of tithes in respect of the said third part, by reason that the same was heretofore parcel of lands belonging to an abbey of a privileged order before and at the time of the dissolution of monasteries, as after-mentioned.

sions of the abbey of *Cisterland*;

The defendants disclaimed all right to tithes of the other two third parts, as being only lessees or farmers thereof, so that the chief point in controversy by this suit as between the plaintiff

(a) See ante, page 31.

VOL. III.

Z

and

TOWNLEY  
against  
TOMLINSON.

The defendants say, that they hold lands in the township of *Pilling*; that they had duly set out the several tithes arising thereon; and had retained one-third part of the tithes so set out as their own property;

that one-third part of the lands in *Pilling* are held at low rents; another third part at rack-rents; and the other third part on lives; that *R. Hesket*, who held the lands on lives had conveyed them to the defendants; and that the said lands so conveyed to them were tithe free, as having been parcel of the possession

that they disclaimed all right to the other two-third parts;

TOWNLEY  
against  
TOMLINSON.

that the said ab-  
bey was of the  
order of *Præ-*  
*monstratenses*;

and the lands  
belonging to it  
exempted from  
tithes when in  
the immediate  
occupation of  
the abbey;

that the said  
lands were in  
the occupation  
of the said abbey  
when it was dis-  
solved by *Henry*  
*the Eighth*;

and were there-  
fore discharged  
in his hands  
from the pay-  
ment of tithes;

that the exemp-  
tion was not  
clearly made out  
in the former  
suit;

that there are  
divers ancient  
records by which  
the exemption  
of these lands  
from the pay-  
ment of tithes  
appears;

and defendants was, whether such third part was exempt from tithes when occupied by the owners of the inheritance thereof, or not.

The defendants therefore, with respect to such exemption and discharge, further said, that as well the lands in question as the tithes thereof had been formerly part of the possessions of the abbey of *Cockersand*, in the said county; that the said abbey was of a very ancient foundation, and of the order of the *Premonstratenses*; that the religious houses of that order, by virtue of some ancient bulls of exemption, had immemorially held their lands freed and discharged from the payment of all tithes whatever, or any *modus* or composition in lieu thereof, when such lands were in the immediate manurance, culture, and occupation of the abbot and convent, as owners of the inheritance thereof, and not let to farmers or tenants; and they insisted, that for time immemorial, and until and at the time of the surrender and dissolution of the said abbey, the tithes of *Pilling* belonged to and were the inheritance and part of the possessions of the abbot and convent of the said abbey; that the lands in *Pilling* whereof the tithes were demanded by the bill, had also been for time immemorial, and until and at the time of the said surrender and dissolution in the actual hands, culture, and occupation of the said abbot and convent for the time being; and that as such, and by virtue of the exemption before-mentioned, they were discharged from the payment of any tithes to themselves or any other person whatever; and that the lands had been immemorially, and still ought to be so exempt and discharged when occupied by the owners of the inheritance thereof, and not let to tenants or farmers, not only during and in case of unity of right and possession to such tithes and lands, but also when such right and possession were severed, and to whomsoever the same respectively belonged.

This was the plain uncomplicated exemption and discharge now claimed and insisted on by the defendants for and in respect of the third part of their said lands; and they further said, that during such unity of right and possession by the said abbot and convent it was needless, and that afterwards, during the occupation of the said lands by lessees or farmers, it would have been unavailing, to insist on the said exemption; and they admitted, that, being but modern purchasers, they had misconceived, and not sufficiently made out their defence in the former suit. But they further said, that there were divers records and testimonies to manifest such exemption, and particularly that it appeared by a grant made in the second year of *King John*, that he granted to the *Canons of Cockersand* for ever the whole pasture of *Pilling*, to hold in free, pure, and perpetual alms, with all its easements; that afterwards, by a surrender of *Robert*, then abbot of the said abbey and of the convent of *Cockersand*, executed under their conventual seal in the thirtieth year of *Henry the Eighth*, the said

abbey,



abbey, with all its manors, lands, tithes, and other possessions, were surrendered to the said king, to hold to him and his heirs for ever, whereby, and by virtue of the statute 31. *Hen. 8.* intituled, "An Act for the Dissolution of Monasteries and "Abbies," the said abbey with all its possessions (whereof the lands of which tithes were now demanded were part) became vested in the said king, his heirs and successors, freed and discharged from the payment of tithes in the same manner as they were held by the said abbey; that his said majesty being so seised did, by his letters patent dated the first of *September*, in the thirty-fifth year of his reign, for the consideration therein mentioned, grant to *J. Kychin* and his heirs the scite of the said abbey of *Cockersand*, with the appurtenances, and several other parcels of land in the answer mentioned; and also all that the grange or pasture of *Pilling*, containing one thousand acres, and all the lands known by the name of the *Demesne Lands* of the said abbey, to hold the same in as full and ample manner as any of the abbots had held the same at or before the dissolution thereof; and they insisted, that by virtue of such grant, and of the grant by *King John*, and of the said surrender and act of parliament, the said *J. Kychin*, and all persons claiming under him, and the lands so granted to him as aforesaid (of which the lands whereof the tithes now in dispute were part), were entitled to the said exemption and discharge from the payment of all tithes, offerings, and ecclesiastical dues whatsoever, when in the hands and occupation of the owners of the inheritance thereof, in as ample a manner as the said abbot and convent before their surrender and dissolution, or as the said *King Henry the Eighth* after such dissolution whilst the same continued in his hands, were or was entitled thereto, such exemption being a privilege which attached, immediately on being granted, upon the inheritance of the lands themselves. And they further insisted, that although, by reason of the said unity of possession, and by the said lands being afterwards leased out to farmers, there might have been no opportunity of claiming the actual enjoyment of the said exemption for ever so long a time, yet that when the said unity of possession became severed, and the said leases expired, the said exemption would and did come in play and force again, as before insisted upon. They further said, that all the lands therein descended from the said *J. Kychin* to three of his daughters, who married, and held their three parts of the said lands in common undivided, and from time to time demised the same upon leases to tenants until the year 1747, when *R. Hesketh* (whose ancestor married one of the three daughters) began to sell off his undivided third part into freehold or lands of inheritance; that the fourth daughter of the said *Kychin* had married one *Tichborne* or *Werden*; that her fourth part or share of her father's lands was divided from the other three-fourth parts into severalty,

Z 2

and

TOWNLEY  
against  
TOMLINSON.

that *Henry the Eighth* conveyed the manor of *Pilling* and the demesne lands of the abbey to *J. Kychin*;

that when the lands were leased, the exemption revived on the expiration of the leases;

that *Kychin* conveyed to three of his daughters as tenants in common;

that *Kychin's* fourth daughter held her share in severalty;

TOWNLEY  
against  
TOMLINSON.

that there are  
otherlands which  
had belonged to  
the same order  
which are held  
tithes free ;

that certain lands  
were exempt-  
ed from small  
tithes in kind ;

and only certain  
sums payable  
yearly for Easter  
offerings,

and was still held in severalty by sundry persons to whom the same had, from time to time, been sold off ; that such lands were known and distinguished from the other lands in *Pilling* by the name of *Ticbborne* and *Werden's Lands*, and were in the actual possession or enjoyment of the said exemption and discharge, now insisted on by the defendants, when such lands were in the hands and occupation of the owners of the inheritance thereof. The defendants further said, that there were divers other lands (besides those last mentioned, and those of which the tithes were now in dispute) which were formerly, and before the dissolution of monasteries, belonging to the abbey of *Cockerfand*, and also to other religious houses within this kingdom, which were of the said *Premonstratensian* order, and which immemorially were, and still are, held, exempt, and discharged from the payment of tithes whilst in the hands, culture, and occupation of the owners of inheritance thereof, particularly in *Wartan*, *Ellell*, *Middleton*, and in divers other parishes and places, which they hoped would be evidence beyond a doubt, not only of the justice and legality of the exemption and discharge now claimed by them, but also that such ancient bull or bulls of exemption before mentioned to be granted in favour of the said religious order of the *Premonstratenses*, and which was the ground and foundation of such exemption, did obtain here, and was actually received and sufficiently put in use within this kingdom, so as to avoid the force and power of the statute 7. Hen. 4. concerning such bulls and all other acts of parliament relative thereto. They further said, that with regard to personal or small tithes within the said township of *Pilling*, there was, and for time beyond the memory of man had been, an ancient and laudable custom, that every householder in *Pilling* being a single person, and only lessee or farmer of the house wherein he dwelt (except those who inhabited the *Abbey House* and the occupiers of the *Moss Pasture* and *Mill Pasture*, being the inheritance of *R. Dalton*, and also except the occupiers of the farm or tenement being part of the *Ancient Demesne of Pilling*, and now or late the inheritance of *E. Hornby*, who claimed an exemption from payment of any tithes, offerings, or ecclesiastical dues whatever, in the hands of the owners, or of the farmer thereof, and those discharged by *modus* for or in respect of the same only, and also except the lessees or farmers of two dwelling-houses in *Pilling* occupied by *G. Dickson* and *J. Sumner*, which were or are claimed to be exempt from payments of all tithes, offerings, and ecclesiastical dues whatever, by *modus*, save the tithes of corn and grain) should pay one penny yearly ; and every householder in *Pilling* aforesaid, being a married man, and only a lessee or farmer of the house wherein he dwells (except as aforesaid), the sum of twopence yearly to the owner of the tithes of *Pilling* for the time being, their farmers or lessees, at *Easter* yearly, or so soon after as demanded, as a recompence

recompence for and in lieu and full satisfaction of the tithes of all garden stuff yearly arising in their respective gardens in *Pilling* afore said, and that the same had been immemorially received and accepted accordingly by the said owners and impropiators for the time being, their lessees or farmers, save only till of late, when the disputes relating to tithes began; that within the said township of *Pilling* there had been and was another ancient immemorial custom, that the occupiers of lands therein being lessees or farmers (except the occupiers of the lands and tenements discharged in general by exemption or by *modus* as afore said), pay yearly at *Easter*, or so soon after as demanded, the sum of twopence for every milch cow that had a calf in the year, to wit, between *Easter* and *Easter*, and was kept and depastured on the lands held by them as lessees or farmers in *Pilling* afore said, and the titheable places thereof; and the sum of one penny for every milch cow that had not a calf in the year, to wit, between *Easter* and *Easter* (which were there usually called *bands* or *whites*), and was kept and depastured as afore said; and that such yearly payments had been, for all the time afore said, received and accepted accordingly; that also there had been another ancient custom, that every occupier, &c. (except as afore said) had yearly, when he kept a cow in *Pilling*, &c. paid, or ought to pay, at *Easter*, or so soon after as demanded, the sum of one penny to the owners, farmers, or lessees of tithes in *Pilling*, as a recompence, and in lieu and full satisfaction of and for the tithe for the agistment of dry, barren, and unprofitable cattle fed and depastured on lands and grounds held by him as lessee or farmer; and that the same had been received and accepted accordingly; therefore no tithe in kind was due or payable for agistment tithe; that there was also another ancient and immemorial custom, that the occupiers of any lands or grounds therein, or the titheable places thereof, being lessees or farmers (except as last before excepted), should gather, bind, and set up in sheaves and hattocks, the tithes of corn and grain arising on their respective lands; and that in consideration thereof, such occupiers should only set out and answer every tenth hattock thereof, without setting out or paying any thing for odd hattocks under ten, and that the corn and grain in each close, and of each different kind or species, should be tithed separately and distinctly by itself, and without numbering or counting out of one close into another, or out of one kind or species of corn and grain into another; which custom and manner of tithing, and of gathering, binding, and setting up in sheaves and hattocks, had been immemorially observed in *Pilling* afore said, and the titheable places thereof; that also, by ancient usage and custom immemorially observed within the said township, the occupiers of lands therein (except as afore said), had, for and in respect of their messuages, lands, and tenements, held by them as lessees or farmers, paid the following *Easter* offerings,

TOWNLEY  
against  
TOMLINSON.

garden stuff,

milch cows;

that the tithes of  
corn and grain  
should be set out  
in a particular  
manner;

that certain sums  
are payable in  
lieu of small  
tithes;



TOWNLEY  
against  
TOMLINSON.

small tithes, and ecclesiastical dues, viz. every householder, for offerings yearly, threepence; and for tithes of pigs, if seven and upwards and under seventeen, one pig; and if seventeen and upwards, and under twenty-seven, two pigs; and for every ten pigs above seventeen, one pig; and in like manner for the tithes of geese and sheep; and for a foal, in the year it was foaled, one penny; and for every calf, in the year it was calved, one halfpenny; and for every swarm of bees increased in the year, one penny; for eggs, if any, one halfpenny; and for hemp and flax, one halfpenny.

a modus in lieu  
of tithe hay;

The defendant *Smith* said, that when the ancient messuage and tenement in his occupation was heretofore in the occupation of tenants, and not of the owners of the inheritance thereof, such tenants had, for time immemorial yearly at *Easter*, or so soon after as demanded, paid, and been used and accustomed to pay for all the time aforesaid, and still of right ought to pay, to the owners of the tithes in *Pilling*, their lessees or farmers for the time being, the sum of one halfpenny as a certain *modus* or composition in lieu of and in full satisfaction for tithes of all and all manner of hay yearly arising upon the said tenement.

that they could  
not state whe-  
ther *Pilling* is in  
*Garstang*;

All the defendants said, that they could not certainly set forth, whether the said township of *Pilling* and titheable places thereof (wherein the said lands lay) were situate within the impropriate rectory and parish of *Garstang* or not; though they admitted, that it appeared by many records that such township was therein described to be situate within that parish, yet that the church or chapel of *Pilling* was a parochial church or chapel, and that the said township had been reputed to be an entire township, lordship, and manor of itself, where a court was held, and maintained its own poor, and raised its own taxes, without paying or contributing any parish rates or church dues to the parish church or vicar of *Garstang*; and therefore they left the plaintiff to the proof thereof, it not being of consequence to them to dispute the same, but to contend their right to the privilege and exemption as insisted on by their answer. They further said, that if neither they nor the other owners and occupiers of lands in *Pilling* heretofore belonging to and part of the possessions of the said dissolved abbey of *Cockersand*, had ever pretended to claim any other or greater exemption than that which was now insisted on, such exemption would never have been disputed or denied by the plaintiff or her predecessors, or any other person claiming tithes in *Pilling*. But they admitted, that having mistaken their said privilege and partial exemption, and instead thereof pretended sometimes to a total or general one, by reason of those lands having been heretofore parcel of the possessions and inheritance of a greater monastery, there was such a suit heretofore brought by the plaintiff against them

that if they had  
never insisted on  
a greater ex-  
emption than  
that which they  
now claimed,  
the plaintiffs  
would not have  
disputed it;

them and others ; and that, they being but modern purchasers, and sometimes apprehending themselves entitled to and insisting upon a general exemption, and at other times a partial exemption; and thereby neglecting properly to state the time, nature, and ground of the said partial exemption now insisted upon, and to apply their defence and proofs in support of such partial and true exemption, the Court did, in such former suit, decree tithes in general to be accounted for and paid by the defendants (except as to milk, calves, and garden stuff) ; but they insisted, that such a decree would not have been made in case they, in the said suit, had never claimed more than the said partial exemption, and had not set up other misconceived and inconsistent defences, and mistakenly applied the weight of their proofs, in disputing the rights of the parish of *Garstang* and matters not applicable to the true question, and neglected to prove to the Court ; that not only the owners of the inheritance of lands within *Pilling* aforesaid, but also the owners of lands in other places which formerly belonged to the said dissolved abbey of *Cockersand* and to other monasteries within this kingdom of the said order of *Premonstratenses*, were, and immemorially had been, in the actual possession and enjoyment of the said exemption from paying tithes of such or so much of such lands as were, or from time to time heretofore had been, in their own manurance, culture, and occupation : wherefore they hoped, that they should not be bound or precluded further by the said decree than as to such tithes as were decreed to be accounted for and paid to the plaintiff down to the time of making thereof ; and said, that if the said suit had been properly managed, they had not only been saved the grievous expence thereof, but also the trouble of this suit, and had been left in the quiet possession and enjoyment of the said ancient and immemorial privilege and exemption by them in their answer insisted upon as belonging to the lands of which they had respectively purchased third parts as aforesaid.

TOWNLEY  
against  
TOMLINSON.

but that they, from an ignorance of their real rights, had, by their former bill, claimed a total exemption from tithes.

The plaintiff replied ; the defendants rejoined ; and several witnesses were examined on both sides ; and now upon hearing counsel on both sides ; and on reading, for the plaintiff, the deposition of *James Fisher*, clerk ; and the following evidence for the defendants, that is to say, an ancient grant (without date) of *Theobald Walter*, of the *Haye of Piling*, to the abbey of *Cockersand* ; an ancient grant, being a confirmation of the before-mentioned grant of the *Haye of Piling*, dated the fourteenth of *March*, in the second year of *King John* ; another ancient grant, being a like confirmation, dated the fourteenth of *March*, in the eleventh year of *Henry the Third* ; the deposition of *William Matthews*, proving the following exhibits to be true copies ; a true copy of the confirmation of *Piling* to the said abbey, in the eighth year of *Richard the Second* ; a true copy of the letters patent

The evidence  
read.

TOWNLEY  
against  
TOMLINSON.

for continuing *Cockersand Abbey*, in the twenty-eighth year of *Henry the Eighth*; the surrender executed by the abbot and convent of the abbey of *Saint Mary of Cockersand*, dated the twenty-ninth of *January*, in the thirtieth year of *Henry the Eighth*; a copy of the grant from the crown of *Pilling* to *John Kychin*, dated the first of *September*, in the thirty-fifth year of the same king; and on reading the deposition of *James Standen*, and the deed of conveyance therein proved by him to the defendant *J. Tomlinson* of the fee and inheritance of one-third part of the lands occupied by him in *Pilling*, as aforesaid particularly mentioned in his answer; the depositions of several other witnesses; the original inrollment from the augmentation office of the account of *John Kychin*, farmer of part of the possessions of the said abbey of *Cockersand*, from *Michaelmas*, in the thirtieth year of *King Henry the Eighth*, for one year; and on the defendant's counsel proposing to read the deposition of *E. Cuming*, the same being objected to by the counsel for the plaintiff, and refused by the Court to be read; and on reading several other depositions, and the answers, and the deposition of *J. Taylor* taken on his cross examination; an indenture of lease, dated the fifteenth of *July* 1659, from *E. Worden* to *M. Addison*, of *Ulerick Meadow*, in *Pilling*, to hold for ninety-nine years, determinable on three lives; a like indenture, dated the same day, from *E. Worden* to *A. Thompson* of other lands in *Pilling*, for a like term determinable as aforesaid; a like indenture of assignment, dated the second of *February* 1676, from *R. Townson* to *H. Thompson*, reciting a lease from the said *E. Worden* of two acres of land in *Pilling* for the like term, determinable as aforesaid; an indenture, dated the fifth of *May* 1682, signed *H. Worden* and others; and reading a book intitled "*Pilling Easter Book 1744*;" and several indentures of leases and releases; and upon reading, on behalf of the plaintiff, a decree of this court, dated the tenth of *May*, in the twenty-fourth year of *Queen Elizabeth*, in a cause then depending touching the tithes of *Pilling*, between *Jane Kychin* plaintiff, and *Thomas Holmes* and others defendants; a subsequent decree of this court made in the same cause, dated the twentieth of *November*, in the twenty-fifth year of the said queen; several depositions and orders to prove the following exhibits, &c. viz. a copy of the grant of *James the First*, in the second year of his reign, of the rectory of *Garstang* to *L. Baskerville* and others; a confirmation by *Henry Archbishop of Canterbury* of a decree of *POPE LUCIUS* in favour of the monks of the *Cistercian order*; and also on reading copies from the augmentation office of the minister's accounts relating to the possessions of the abbey of *Cockersand*, from *Michaelmas*, in the thirtieth year of *Henry the Eighth*, to the *Michaelmas* following; and of the proposal of *John Kychin* for the purchase of *Pilling*; and of the particular made in consequence thereof; and



and also the bill, answer, and depositions, in a cause heretofore depending in this court between the said *C. Townley*, widow; plaintiff; and the said *J. Tomlinson*, one of the defendants in this cause, and others, defendants; and a decretal order made on the hearing, dated the twenty-first of *June* 1762; and on full debate of the matter; and on hearing all that was alledged by counsel on both sides;

TOWNLEY  
against  
TOMLINSON.

THE COURT, which was full, declared, that the plaintiff *Cecilia Townley* was well entitled to the tithes in kind demanded by the bill, and disallowed the exemption set up by the defendants in their answers to the said bill for the payment of tithes of the lands in *Pilling* aforesaid, as owners of the inheritance thereof; AND ORDERED AND DECREED, that an account be taken of what was due from the defendants respectively to the plaintiff for a moiety of the several tithes and other ecclesiastical dues demanded by the bill; and also for a moiety of the several *moduses* in lieu of the tithes of milk, calves, and garden stuff respectively, which were admitted by the bill to be due and payable.

The Court disallows the exemption set up by the defendants,

and order them to account accordingly; and for a moiety of the *moduses* for milk, calves, and garden stuff.

THE COURT also with respect to the several other *moduses* insisted upon by the defendants in their answers, in regard such *moduses* were improperly laid therein, disallowed the same without prejudice, and referred it to the deputy remembrancer to take the account; the defendants to pay to the plaintiff her costs of this suit to be taxed; and further directions to be reserved until after the report.

The other *moduses*, being improperly laid, are disallowed, but without prejudice.

The deputy remembrancer made his report, dated the twenty-fourth of *July* 1772; and the cause coming on to be heard on the said report (no exceptions having been taken thereto); and upon hearing counsel for the plaintiff; and reading the said decree and report; the said report was ratified and confirmed, and the defendants ordered to pay their moiety of the said tithes and *Easter* offerings for seven years past, viz. the defendant *J. Tomlinson*, ten pounds, two shillings, and threepence; *J. France*, eight pounds, six shillings, and elevenpence halfpenny; *H. Smith*, four pounds, fifteen shillings, and fourpence halfpenny; costs taxed at two hundred and forty pounds, sixteen shillings, and fivepence; and also subsequent costs.

The report made and confirmed.

BENISON, Widow, against SMITH.

EASTER TERM  
11. GEO 3.

Lancashire, 25th April 1771.

THE bill stated, that the plaintiffs were seised for several years past of, and well entitled to, one undivided moiety or half part of all and singular the tithes of corn, grain, grass, hay, and all other tithes whatsoever, predial, personal, or mixed, and all and

The like cause as in the preceding case.

BENTSON  
against  
SMITH.

and singular offerings, oblations, obventions, and other ecclesiastical dues arising in the township or hamlet of *Pilling*, within the impropriate rectory and parish of *Garstang*: and they set forth their title, and the demand of the same species of tithes and offerings; and admitted the same *modus*es as in the foregoing cause of *Townley v. Tomlinson*; and prayed the like account.

The defendants also in this cause put in the like answer, and set up the same exemption and *modus*es for their lands, &c.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides several days; and reading the depositions in this cause, and also in the other cause, and exactly the same evidence with the following, viz. copies of the bill, answer, depositions, decree, master's report, subsequent decree, and subsequent report, and other proceedings in a cause heretofore depending in the high court of chancery, wherein *Anne W. Benison* and others were plaintiffs, and *John Benison*, clerk, and others, were defendants; and also a receipt for the sum of eighty pounds, one shilling, dated the fourth of July 1767, signed *F. Winckley*; and on full debate of the matter; and on hearing all that was alleged by counsel on both sides;

THE COURT declared, that the plaintiffs were well entitled to the tithes in kind demanded by the bill, and disallowed the exemption, set up by the defendants in their answers to the said bill, from the payment of tithes of the lands in *Pilling* aforesaid, as owners of the inheritance thereof when in their own occupation (a); and decreed an account to be taken of what was due from the defendants respectively to the plaintiffs for a moiety of the several tithes and other ecclesiastical dues demanded by the bill; and also for a moiety of the several *modus*es in lieu of the tithes of milk, calves, and garden stuff, which were admitted by the bill to be payable; and with respect to the several other *modus*es insisted upon by the defendants in their answer, in regard such *modus*es were improperly laid therein, the Court disallowed the same without prejudice, and referred it to the deputy remembrancer to take the account; the defendants to pay the plaintiffs their costs.

(a) The case of *Lord v. Tuck* was cited out of *Bunbury*, 7th December 1722, in this cause, when the Lord Chief Baron PARKER said, that it appeared by a note of Mr. BARON PRICE, which he had seen, that *Bunbury* had misrepresented that case.

BROMHEAD *against* ASHFORTH.EASTER TERM  
11. GEO. 3.*Lincolnshire, 29th April 1771.*

THE bill stated, that *G. Murray*, clerk, prebendary of the prebend of *Corringham cum Stow* founded in the cathedral church of *the Blessed Virgin Mary of Lincoln*, in the county of *Lincoln*, being seised of and well entitled, in right of his said prebend, to the tithes in kind of all sorts of corn, grain, hay, and all other great tithes whatsoever, yearly arising within the townships and parishes of *Stow, Great Corringham, Little Corringham, Springthorpe, Somerby, Wheatbear, Aisby, Tawthorpe, Dunstall, Sturton, Normanby, Bransby*, and other places, did, by indenture of lease dated the first of *March 1760*, demise to the plaintiff, his heirs and assigns, all that the said prebend, with all manors, mansion-houses, tithes, oblations, obventions, glebe lands, &c. situated within the before-mentioned townships (the advowson, gift, and presentation of the vicarages of *Corringham* and *Stow*, or the nomination of a curate to the curacy thereof, excepted), to hold for three lives now existing; that, from the date of the said lease, the plaintiff had continued, and was in possession of the manors, &c. so demised, and by virtue thereof was well entitled to tithes in kind of all sorts of corn, grain, and hay, and all other great tithes yearly growing within the several townships aforesaid; that all such tithes from time to time ought to have been annually set out and rendered in kind to the plaintiffs by the respective occupiers of the several lands and grounds within the said parishes and townships; that the defendants, ever since that lease, had severally held and occupied large quantities of arable, meadow, pasture, and wood land in the said hamlets or townships of *Somerby* and *Wheatbear*, and in each year had thereon wheat, rye, barley, oats, and other corn and grain, as well as pease, beans, and sundry other matters besides hay and clover; all which they reaped and carried away annually, and converted to their own use, without setting out the tithes thereof in kind to the plaintiff as they ought to have done, insisting, that tithes in kind were not due within the said townships, but that a *modus* of ten pounds *per annum* in lieu of all great tithes was due for the same, and had always been accepted. But the plaintiff insisted, that the said ten pounds a-year had been paid for lands called *Somerby Park*, and was only a temporary composition for the same; and that he was therefore at liberty to elect and take his tithes in kind. The bill further charged, that all occupiers of the lands within the hamlets of *Somerby* and *Wheatbear* had for time immemorial, and still did, render or pay all vicarial tithes arising from the lands, or the produce or agistment thereof, to the vicar of *Corringham* in kind. The bill therefore prayed, that the defendants might be decreed to account for all and

The prebendary of *Corringham*, in *Lincolnshire*, claims the great tithes of the hamlets of *Somerby* and *Wheatbear* in kind.



BROMHEAD  
against  
"Ainsworth."

The defendants  
say, that the  
hamlets of *Somerby* and *Wheatbear*  
are only one  
township;

that there is a  
*modus* of 10*l.* a-  
year, payable on  
the first of *May*,  
in lieu of all  
great tithes aris-  
ing therein;

that no great  
tithes so arising  
had ever been  
paid in kind;

that the lands  
called *Somerby*  
*Park* lie within  
the said town-  
ship;

and every the tithes aforesaid, and pay what should appear due.

The defendants said, that *G. Murray* was prebendary of the prebend of *Corringham cum Stow*; and that he had duly executed the said lease to the plaintiff; but they denied, that he was entitled to all the great tithes in the townships aforesaid being one township; and insisted, that he had never been entitled to the tithes in kind therein; for that within the townships of *Somerby* and *Wheatbear* there was, and had been immemorially, a certain *modus* of tithing corn, grain, hay, and all other great tithes whatsoever in the said townships of *Somerby* and *Wheatbear*, that is to say, that the sum of ten pounds of lawful money of *Great Britain* had immemorially been payable on the first day of *May*, old stile, or as soon after as the same should be lawfully demanded, as and for a *modus* in satisfaction of all tithes of corn, grain, and hay, and all other great tithes whatsoever yearly arising in the said township or hamlets of *Somerby* and *Wheatbear*; and they insisted upon the said *modus* in bar of the tithes demanded by the plaintiff. They admitted, that they had held parcels of land therein, and set forth an account of the same, and of the species of corn, grain, hay, and other titheable matters which they had had thereon in every year, but not the values thereof, they having kept no account; and insisted, that from time immemorial no great tithes in kind had ever been set out, paid, or demanded save the said *modus*, except by the defendant *Williamson*, of whom a pasturage tithe of two shillings in the pound was demanded in the year 1759. They admitted, that the plaintiff had, on the eleventh of *February* 1766, given them notice to set out their tithes in kind in that year from the lands they occupied in *Somerby*; and that he had also demanded an account of the same ever since they had been tenants thereof. They denied, that they had ever refused to discover by what means the several lands within *Somerby* and *Wheatbear* by them occupied were free and exempt from great tithes, or that they ever pretended any other exemption from the payment of great tithes for or in respect of all or any such lands, or any *modus*, composition, or other payment in lieu thereof, save the said *modus* of ten pounds *per annum*. They admitted, they had insisted that the said *modus* had been immemorially paid or payable in such manner as before set forth in bar of all such great tithes arising from certain lands called by the name of *Somerby Park*, parcel only of the land lying within the said hamlet or township of *Somerby* and *Wheatbear*, but had no receipts for the same, it being paid by the owners of the said lands; and they insisted, that the said *modus* covered all the lands in the said hamlets, which contained near one thousand, five hundred, and twenty-three acres, and were fertile and cultivated, so that the great tithes, if rendered in kind, would have far exceeded the value of the said

said *modat*; and therefore such tithes would not have been neglected to have been demanded for time immemorial had they been due. They also said, that there was a certain tract of land and ground lying within the said hamlets called *Somerby Park*; but that it had been divided into separate inclosures before they knew the said land; that the *Park* contained four hundred and eighty-seven acres, part woodland, arable, meadow, and pasture; and that it was then in the possession of the defendants *Ashforth* and *White*. They also said, that several ancient compositions, amounting to twenty-four pounds *per annum*, had been immemorially paid by the occupiers of land lying within the said hamlets and the limits and titheable places thereof, for and in lieu of small or vicarial tithes.

BROWNHEAD  
against  
ASHFORTH.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel; and reading the said lease, dated the first of *March* 1760; and several depositions taken in the cause;

THE COURT ordered the bill to be retained for a year, with liberty for the plaintiff in the mean time to try, by an action on the statute 2. & 3. *Edw.* 6. c. 13. his right at law to the tithes demanded; further directions and costs to be reserved; and in case he should not so try his right to the said tithes on the said statute during the time aforesaid, that the bill should from thenceforth stand dismissed with costs.

The bill retained for a year.

### TOOKER against MOORE.

*Somersetshire*, 4th July 1771.

TRIN. TERM,  
11 GEO. 3.

THE rector impropriate of the rectory and prebendal church of *Chilcompton*, in the county of *Somerset*, claimed all great tithes yearly arising therein, and particularly the tithe of hay; and stated, that the defendants *Moore* and *Salmon* had, from the year 1752 to the time of filing the bill, occupied several acres of meadow land in the parish, the grass of which they had yearly mowed and made into hay, and the tithe of which, if duly set out in kind, would have amounted in every year to twenty pounds and upwards in value; but that they had substracted, withheld, and refused to set out the same, on a pretence that the vicar of the parish was entitled thereto, and that they had paid him for the same. The bill therefore prayed, that the defendant *Powell*, who was the present vicar, might set forth, whether he claimed any right to the tithe of hay; that the other defendants might be compelled to account for the said tithes; and that the plaintiff's right thereto might be established.

The impropriator of *Chilcompton*, in *Somersetshire*, claims the tithes of hay in kind.

The defendant *Powell* disclaimed all right to the tithe of hay; and admitted, that the plaintiff was entitled thereto.

The vicar disclaims all right thereto.

**TOOKEN**  
*against*  
**MOORE.**

The defendants say, that there is a payment of 6d. in the pound to the vicar, in lieu of tithe hay and all other vicarial tithes.

The former vicar, who had been removed, ordered to be made a party to the bill.

The defendants *Moore* and *Salmon* admitted, that the plaintiff was the impropiator of the parish, and as such entitled to the great tithes, except the tithe of hay; and said, that they believed that by some ancient endowment or prescription the tithes of hay belonged to the vicar, and that he and all former vicars had always, from time to time, received a pecuniary recompence for the tithe of hay and all small tithes equal to the sum of sixpence in the pound.

The counsel for the defendants *Moore* and *Salmon* objected, on the hearing of the cause, that *Mr. Pearce*, the former vicar, who had received from them the said pecuniary satisfaction in lieu of tithe hay as aforesaid during great part of the time in the bill mentioned, and who had been removed from the said vicarage by a sentence of the court of arches since the exhibiting the bill, was not a party before the Court; and after hearing the plaintiff's counsel in answer of the said objection;

THE COURT allowed the same, and thereupon ordered the further hearing of the cause to be adjourned to a future day, with liberty to the plaintiff, in the mean time, to amend his bill, by making the former vicar a party thereto, upon paying to the defendants the costs of this day's attendance, according to the course of the court.

TRIN. TERM,  
II. GEO. 3.

PRYTHERCH *against* THOMAS.

*Caermarthenshire, 4th July 1771.*

The impropiator of *Llanvynith*, in *Caermarthenshire*, claims two-third parts, and the vicar the remaining third part, of the great and small tithes of the parish; and states, that it is the custom of the parish for the landholders to give proper notice of the setting out of the tithes.

THE bill stated, that *Luke Gwynn*, clerk, prebend of *Llanvynith* and precentor of *Brecon*, deceased, being in his life-time, and at his death, seised in fee of and in two-third parts of the tithes of *Llanvynith*, duly made his will, dated the twenty-first of September 1757, and thereby gave to his sister *Joan Gwynn* for her life, and after her death to *Howell Gwynn*, his heirs and assigns, the said two-third parts of the said tithes, to hold to them, &c. from the tenth of July 1764, for twenty-one years, by means whereof they became entitled to the same during their separate lives; that by indenture made between them and the plaintiff *Prytherch*, they did demise to him the said two third parts of the tithes of corn, grain, hay, wool, lambs, cheese, calves, pigs, geese, hemp, flax, and all other titheable matters within the said parish, as well great as small, yearly arising, &c. to the prebend of *Llanvynith*, for the remainder of the said term, under the yearly rent of one hundred and seven pounds; that the plaintiff *Prytherch* had demised the same to the plaintiff *Jones*, to hold from year to year so long as both should please, whereby he became entitled to the said tithes; that the plaintiff *Copner*, clerk, was duly presented to the vicarage of *Llanvynith*, and



and had duly performed the cure there ; and that, by ancient endowment or long immemorial usage, the vicar for the time being had received the other one-third part of the said tithes ; that the defendant, for two years past, had occupied a farm in the parish, and had sowed the same with wheat, rye, barley, oats, hemp, and flax ; and hoped he would have set out his tithes thereof, and given the plaintiff notice, according to the custom for time immemorial ; but that he had carried away all the said matters and things without setting out the tithes of the same, or making the plaintiff any satisfaction for the same, though applied to for that purpose. The bill therefore prayed, that the defendant might account and pay what should appear due, that is to say, two third parts to the plaintiff *Jones*, and the remaining one third part to the plaintiff *Copner*.

PRYTHERCH  
against  
THOMAS

The defendant said, that he was entirely ignorant, and could not set forth what title or interest *L. Gwynn* had in or to the tithes of *Lanvynith*, or what title or interest *J. Gwynn* or *H. Gwynn* had, nor did he know that they had executed such lease to the plaintiff *Prytherch*, nor whether he had demised the same to the plaintiff *Jones*. He admitted the plaintiff *Copner* to be vicar, and entitled to one third part of all tithes, great and small. He also admitted, that he occupied two tenements in the parish ; and set forth the value, and what wheat, oats, and barley, he had sowed thereon, and the value of the tithes. He also admitted, that there had been, for some years past, a custom of giving notice previous to the setting out of the tithes ; but said, that he knew not, whether it was an immemorial custom or not, or how long it had subsisted. He denied that he had carried off his corn, &c. without setting out the tithes thereof, or that he had refused to give notice ; and said, that the plaintiff *Copner* had carried off his tithes from off the said lands, but that the other plaintiffs had left theirs to the detriment of him the said defendant.

The defendant admits, that such a custom had prevailed ; but denies that it is, to his knowledge, an immemorial custom.

The plaintiffs replied ; the defendant rejoined ; and witnesses were examined on both sides : when upon hearing counsel on both sides ; and reading the depositions in the cause ;

The cause heard.

THE COURT ordered the defendant to account with the plaintiffs for the tithes demanded by the bill, except of hemp and flax, with costs to be taxed.

The defendant ordered to account.

# PENFOLD against BARTLEY.

*Suffex*, 4th July 1771.

TRIN. TERM,  
11. GEO. 3.

THE bill stated, that the plaintiff was, in the year 1752, instituted and inducted into the rectory of *Ashington cum Buncton*, in the county of *Suffex*, and had thereby become tithes of hay, furze, bullocks, wool, lambs, poultry, fruits, and *Easter offerings* ;

The rector of *Ashington cum Buncton*, in *Suffex*, claims the  
entitled

PANFOLD  
against  
BARTLEY,

and says, the defendant had fraudulently driven his ewes out of the parish, to deprive him of the tithe of lambs.

entitled to all tithes, both great and small, in the said parish, and also to *Easter* offerings, viz. to fourpence yearly, at *Easter*, for each person of an age to communicate; that the defendant, for seven years past, had occupied a farm in the parish, and had, during the last year, clover and grass, which he had made into hay; a large furze field, on which he had cut four thousand furze faggots; cows, from which he had had great quantities of milk; six bullocks, which he had fattened; a flock of sheep, which yielded him both wool and lambs; many sows, which had produced pigs; ducks, geese, hens, turkeys, and other poultry, from which he had many eggs; and gardens, which had yielded great varieties of fruit, roots, and herbs; the tithes of all which he had refused to pay. The bill further charged, that the defendant rented a field of turnips or other winter feed in another parish, in order to deprive the plaintiff of the tithe of lambs; for that he had driven the ewes out of the said parish some short space of time before lambing time into the other parish to lamb, and soon afterwards brought them back again into the said parish, and then insisted, that as the lambs were not yeaned in the parish of *Asbington cum Buncton*, he was not entitled to the tithe for the same. The bill therefore prayed, that the defendant might pay to the plaintiff the tithes that were due and in arrear, or make him a reasonable satisfaction for the value thereof, and also pay to him what shall appear to be due to him for *Easter* offerings.

The defendant says, that *Buncton* is a parish of itself; that it is situated in the *Wealds* of *Sussex*; that the rector holds lands therein in lieu of the tithes thereof; that part of his farm is in *Buncton*, part in *Asbington*, and part in *Whiston*; that in 1759 he compounded for his tithes in *Buncton*;

that in 1766 he gave the plaintiff notice to take his tithes of clover and hay; but that he neglected so to do;

The defendant admitted, that the plaintiff was rector of *Asbington cum Buncton*; and said, that *Buncton* was situated in that part of *Sussex* called the *Weald*; that it was a parish of itself, and the church there a parish church, although united with the parish and parish church of *Asbington*; that a considerable quantity of land near adjoining to the church at *Buncton* was, and for time immemorial had been, held by the rector of *Asbington cum Buncton*, either as glebe land, or as allotted to the rector of *Buncton*, in lieu of some tithes there; that about the year 1755 he took the farm he then lived in consisting of arable land, meadow, and pasture; that part thereof lay in the parish of *Buncton*, part within the parish of *Asbington*, and part within the parish of *Whiston*; that for the year 1759 he agreed to pay him a composition of two pounds, five shillings, for the tithes of his farm in *Buncton*; that the said sum was more than the value of the tithes, but that he had complied with the demand of the rector to prevent disputes; that about *Michaelmas* 1760 the plaintiff acquainted him that he would for the future take his tithes in kind; that in the year 1766 he had growing upon the said farm six acres of hay and ten acres of clover; that when the same were mowed and ready to carry away, he gave the plaintiff notice to come and tithe the same; that the plaintiff neglected so to do; that he therefore fairly and duly set out the

the tithe thereof; that the plaintiff did not think fit to take the same away; and that he left it to rot on the ground, to the great damage of the defendant. The defendant further said, that there was belonging to his farm a furze field of three acres, which generally produced, one year with another, about twenty-five or twenty-six hundred kids; that he had used the said kids in burning of lime; that the lime so burnt had been constantly used for the manuring the farm lands and other purposes of husbandry thereon; and that, as no tithe had ever been paid for furzes so used, he had taken them away without setting out the tithe thereof. He admitted, that he had kept several cows, which had yielded milk; but said, that he could not set forth the quantity, as he had taken the whole to his own use; and he insisted, that he had given the plaintiff notice to take his tithe milk for the present year 1767; but that he had neglected so to do. He also admitted, that he had, during the said years, three bullocks, which had been fatted with hay; and insisted, that as he had paid the tithe of the hay to the plaintiff, no tithes were payable for the bullocks so fatted. He also admitted, that he had, for seven years past, kept, as well on that part of his farm which was in *Asbington cum Bunclon* as on that part which was in the parish of *Whiston*, a flock of sheep, which had yielded wool: and he set forth the particular quantity in each year. He further said, that the fields in that part of the farm which were situate in *Whiston* were airier and better than those in the parish of *Asbington*, and that for that reason, and not with a view or design to defraud the plaintiff, he had turned his ewes to lamb into that part which was in the parish of *Whiston*; and that his having turned his ewes to lamb there when he paid the plaintiff the composition as aforesaid was evidence that it was not done with any design to defraud him. He further said, that he had sheared his whole flock at his farm at *Bunclon*, and had been always ready and willing to account for and pay the plaintiff the tithe wool for the whole flock. He admitted, that the sheep had yearly produced several lambs, for which he had not paid the plaintiff any tithe, he not being entitled thereto. He insisted, that since *Michaelmas* 1760 the plaintiff had taken all the tithes in kind which he was entitled to have, except the tithes of wool, milk, clover, and hay. He denied, that the plaintiff was entitled to *Easter offerings*, they having never been paid or demanded in the said parish in the memory of any man then living. And lastly he said, that the plaintiff, for the year 1766, had taken his tithes of pigs, eggs, and fruit.

The plaintiff replied; the defendant rejoined; and witnesses were examined on the part of the defendant only; and upon hearing counsel on both sides; and on debate of the matter;

VOL. III.

A 2

THE

PENFOLD  
against  
BARTLEY.

that he used his furze for the burning of lime, and the lime for the purposes of husbandry on the farm; and so no tithe was due;

that the plaintiff had neglected to take away his tithe milk;

that he had fed the bullocks entirely on hay which had paid tithes;

that he had not driven his ewes into another parish fraudulently;

that he had always been willing to pay for the sheep;

that he had paid all tithes, except of wool, milk, clover, and hay;

that nothing was due for *Easter offerings*.

The cause heard.



PENFOLD  
against  
BARTLEY.  
Bill dismissed as  
to clover and  
hay.

Tithes of furze  
and feeding bul-  
locks decreed.

THE COURT, which was full, ordered so much of the bill as sought an account for the tithes of clover and hay, to be dismissed, without costs on either side.

The defendant offered, by his counsel, to pay the plaintiff two shillings and sixpence for the tithe of furze sold by him, and six shillings for the tithe agistment of barren and unprofitable cattle as demanded by the bill; and the plaintiff agreed to accept the same in full satisfaction of such tithes.

THE COURT thereupon ordered the defendant to pay the said sums of two shillings and sixpence, and six shillings.

Easter offerings,  
and the tithes of  
lambs, wool,  
milk, poultry,  
and fruit de-  
creed.

THE COURT further ordered the defendant to account for the tithe of lambs, wool, milk, pigs, poultry, and fruit, and for Easter offerings at twopence an head for each communicant from Michaelmas 1759, as demanded by the bill, and pay to the plaintiff the costs of this suit to this time in relation to the several matters for which he was decreed to account.

The deputy made his report, dated the ninth of July 1773; and on the sixteenth of July following, the said report was ratified and confirmed, with subsequent costs.

SMYTHE, *Chief Baron.*  
ADAMS, *Baron.*  
PERROTT, *Baron.*  
EYRE, *Baron.*

TRIN. TERM,  
11. GEO. 3.

CUTHBERT against WRIGHT.

Durham, 4th July 1771.

The impropria-  
tor of the pre-  
bend of *Witton*,  
in the parish of  
*Saint Andrew*  
*Auckland*, in  
*Durham*, is enti-  
tled to the tithes,  
both great and  
small, of the  
townships of  
*Newton Cap* and  
*Hunwick*, and  
particularly to  
the tithes arising  
on *Newton Cap*  
*Common*, inclosed  
pursuant to the  
statute 32. Geo.  
2.

THE bill stated, that the collegiate church of *Saint Andrew's Auckland*, in the county of *Durham*, in and before the reigns of *Henry the Eighth* and *Edward the Sixth*, and the dissolution of the said collegiate church, consisted of a deanery and sundry prebends; that they in right thereof were seised, to them and their successors, of the rectory and parish of *Saint Andrew's Auckland*, and of divers messuages, lands, tithes, &c. in the said parish, and elsewhere in the said county, and particularly of the prebend of *Witton*, and of all the tithes whatsoever, both great and small, to the same belonging, and yearly arising therein and in the territories thereof; that the several prebendaries for the time being of the said collegiate church had distinct and separate parts of the revenues, tithes, and estates of the said church allotted and assigned to them to be enjoyed in severalty, and that they had enjoyed the same beyond the memory of man; that the prebendary of the prebend of *Witton* for the time being had all the tithes, both great and small, arising therein, and in the precincts thereof, and of the townships

CUTBERT  
against  
WRIGHT.

ships of *Newton Cap* and *Hunwick*, as belonging to the said prebend; that the said prebendary had been in the occupation or enjoyment of the same until the dissolution of the said collegiate church; that by an act of parliament of the first year of *Edward the Sixth*, the said collegiate church was dissolved, and the said deanery and prebends, and the revenues thereof, were vested in the crown; that by letters patent dated the eleventh of *May*, in the sixth year of *James the First*, the said king granted to *Philips* and *Moore* the said prebend of *Witton*, with all tithes whatsoever, both great and small, thereto belonging, to hold the same to the use of them, their heirs and assigns for ever, of the said king, his heirs and successors, as of the manor of *East Greenwich*, by fealty only in free and common socage; that by mesne conveyances the plaintiff was in the year 1759, and long before, seised in fee of the said prebend of *Witton*, and of the said tithes, as part of the said prebend, yearly increasing within the same and the precincts of *Newton Cap* and *Hunwick*; that by act of parliament 32. *Geo. 2. Hunwick Edge* or *Newton Cap Common*, lying within the said prebend, had lately been inclosed, allotted, and divided between the freeholders and copyholders who were entitled to a right of common thereon in proportion to their respective estates; that the said lands so allotted and divided, or the greater part thereof, had every year since they had been so inclosed and divided been ploughed and sowed with corn and grain and other titheable matters, the tithes of which ought to have been paid in kind to the plaintiff; that the defendants, for five years past, had been owners or occupiers of lands in and upon *Newton Cap Common* within *Witton* and the titheable places thereof; that they had depastured yearly cows, mares, sheep, ewes, and sows thereon; that they had therefrom yearly calves, foals, and lambs; that they had also had pigs, geese, hens, ducks, turkeys, eggs, wool, milk, hemp, rape, hops, honey, apples, pears, plumbs, parsnips, carrots, onions, and other fruits and roots; that they also had corn and hay and other titheable matters; but that they had not set out the tithes in kind thereof, or made the plaintiff and satisfaction for the same; and had also refused to discover the particular quantities or values thereof, on a pretence that the said lands were waste and barren, and that no tithes were due or payable for them. The bill therefore prayed, that the defendants might account for all the tithes, both great and small, of the said lands so inclosed and allotted to them as aforesaid on *Newton Cap Common* so by them respectively held and occupied, which had arisen in each of the said years; be decreed to pay the plaintiff the clear value thereof; and the plaintiffs right to the tithes, both great and small, arising within all the lands so inclosed and allotted established by the decree of this court.

CUTBERT  
against  
WEIGHT.

The defendants said, that the said collegiate church, before the dissolution thereof, consisted of a deanery and sundry prebends, who were seised of the rectory of the parish aforesaid, and of the lands and tithes as mentioned in the bill; but whether they had separate and distinct parts of the revenues, tithes, and estates of the said church assigned in severalty, or whether they had been enjoyed by them immemorially, they knew not. They further said, that the said church was dissolved by act of parliament, and the estates and revenues vested in the crown; but that they did not believe that the prebendary of the prebend of *Witton* was entitled to the tithes within the township of *Hunwick* as belonging thereto, or that he was in the occupation thereof till such dissolution, or that *King James* had granted by patent to the said trustees the said prebend with the great and small tithes belonging thereto, or that the plaintiff, by divers conveyances or otherwise, was seised in fee at the time in the bill mentioned; and they denied that the plaintiff, by virtue of such grant or otherwise, was seised in fee of all tithes, both great and small, in the said parish, and particularly that he was ever seised or entitled to such tithes in, upon, out of, or from any of the lands of the defendants in the said township by virtue of the said grant, or that he, or those under whom he claimed, ever received any such tithes, or any composition or satisfaction for the same. They further said, that they believed that by letters patent dated the twenty-sixth of *November*, in the twelfth year of *James the First*, his said majesty had granted to *Morrice* and *Cole* the tithes, &c. arising in *Saint Andrew's Auckland* and other places therein mentioned belonging to the said collegiate church, late in the occupation of *Robert Hindsmer*, clerk, of the yearly value of seventy pounds, and all tithes of corn, &c. great and small, and rents, &c. arising within the said townships, with all tithes, &c. thereto belonging, to hold to them and their heirs, to be held of his majesty as of his manor of *Rast Greenwich*, by fealty only, in free and common socage; and that the said *R. Hindsmer* before that time was entitled to and in possession of all such tithes arising in the townships of *Hunwick* and *Heimedon* in the said parish; that in pursuance of such grant, the said *Morrice* and *Cole* entered on the said premises, and by indenture dated the fourteenth of *January*, in the twelfth year of *James the First*, granted to *J. Eden, senior* and *junior*, and others, their heirs and assigns for ever, the said tithes and premises, to hold two fourth parts thereof to the use of the said *Edens*, their heirs, &c.; one fourth part to *William Williamson*; and the other fourth part to *G. Downes*, their heirs, &c.; that the said grantees had severally enjoyed their several shares of the said tithes in such proportions; and that on the death of the two *Edens*, their share descended to *R. Eden*, son of the elder; that *R. Eden* sold his moiety thereof to *C. Byerley*, who became seised thereof to him and his



his heirs; that afterwards the said *Williamson* and *Downes* sold their two undivided fourth parts to *J. Carr*, who died, leaving *C. Carr* his son and heir, to whom the said two shares descended; and so on as in the said answer is stated.

CUTHBERT  
against  
WRIGHT.

The defendant *Wright* said, that he, for many years past, had been occupier of lands, &c. in *Hunwick*: and he described them in his answer, and said, that he had been, for ten years past, occupier of forty-eight acres of land in *Hunwick*, which had been allotted to him by act of parliament in right of his lands therein; that *W. Wright* his relation was seised of the lands he so occupied, and of the tithes thereof, both great and small; that he died seised thereof; that they descended to *W. Wright* his great grandson, who was now owner thereof; and he insisted, that neither the said *Wrights* or any of their descendants or tenants had ever paid any tithe, great or small, to any person whatsoever, for the said ancient lands or the said common; and that the owners and occupiers thereof for the time being constantly took and enjoyed to their own use all tithes whatsoever, without any claim or demand from any person whatsoever.

The defendant *Fletcher* and his wife said, that they were seised for their joint lives, and after the decease of either during the life of the survivor, with remainder over, of the capital messuage, &c. in the township of *Hunwick* called *Kringledikes*, and of several parcels of land in his answer described: and he insisted, that his descendants or tenants had never paid any tithes whatsoever for the said lands or common, and that the owners or occupiers thereof constantly took and enjoyed to their own use all such tithes, without any claim or demand from any person whatsoever.

Both the defendants insisted, that *Trotter* and *Wright* (from whom they claimed) were purchasers for a valuable consideration of the said tithes and premises in the deeds mentioned in their answers: and they claimed title to all the tithes of their said lands; and said, they had ever enjoyed them till the filing of the bill. They said, that they believed those who claimed under them had likewise enjoyed their lands tithe free; and in particular, that such owners or their tenants had received the tithes from the pasturage of the cattle on the common being appurtenant to their said lands. They insisted, that neither the plaintiff, nor any person claiming under the letters patents of the eleventh of *May*, in the sixth year of *James the First*, had ever received any tithes whatever of the lands occupied by the defendants, or from the said common called *Hunwick Edge*, in respect of the said lands. They further said, that they believed that under the act of parliament in the late king's reign, the aforesaid large common or moor had been inclosed, allotted,

CUTBERT  
against  
WRIGHT.

and divided among the freeholders, &c. in the said townships in proportion to their estates; and that the said lands had in each year been ploughed and sown with corn and grain, which had been reaped, and divided proportionably among them. They denied, that the plaintiff, or those under whom he claimed, were ever in possession, or entitled to all or any of the tithes arising from the defendants lands or such allotments; or that they had ever said that their estates were exempt from tithes by any *modus*, or that they were owners of the ancient lands as well as the allotments by virtue of their said titles, or that they ever insisted that the same were exempt from tithes for seven years from the time of the inclosure. They admitted, that they had never paid any tithe, or made any satisfaction to the plaintiff for the same; and insisted, they were not liable to the payment thereof, and that they had under their titles and conveyances held and enjoyed the several tithes and premises belonging to them respectively, as well of the new as of the ancient inclosures, without any claim, save by the bill; and they hoped that they should not be obliged to set forth an account of their tithes, or to account and pay the plaintiff for the same: and they further insisted, that the plaintiff had not in his bill set forth such title to the said tithes as ought to entitle him to any such discovery or account.

The plaintiff replied; the defendant rejoined; but no witnesses were examined on either side; and upon hearing counsel on both sides;

THE COURT, which was full, ordered, with the consent of the defendant's counsel, that the plaintiff's right to all the said tithes, both great and small, arising within all the said lands so inclosed and allotted as aforesaid, should be established; and that the deputy remembrancer should take an account of what was due to the plaintiff for all the tithes demanded by the bill, and pay the plaintiff his costs,

MICH. TERM,  
10. GEO. 3.

THE BISHOP OF OXFORD *against* COLLINS.

*Durham, 10th December 1771.*

THE rector of *Sedgefield*, in the county of *Durham*, claimed all tithes, great and small, yearly arising therein, and particularly the tithe herbage or agistment tithe for all barren and unprofitable cattle fed or depastured upon lands in the township of *Morden* since his induction in the year 1755. He stated, that the defendants, for three years past, had severally held lands in the said township; and that they had in each year fed and depastured thereon barren and unprofitable cattle, the 3<sup>rd</sup> part of the yearly value of the lands, for the depasturing of the cattle of the occupiers, and the tenth part of what he receives for cattle depastured for hire.

as well of their own as of others taken in for hire, TO WIT, horses, mares, colts, fillies, oxen, steers, cows, heifers, sheep, and other cattle; that tithe herbage or agistment ought to have been paid for the same to him in manner following, *viz.* for all such barren and unprofitable cattle of their own the tenth part of the yearly value of the lands whereon they had severally been fed and depastured; and for all such as were taken in and fed for hire, the tenth part of the money which was paid for such depasturing and feeding.

THE BISHOP OF  
OXFORD  
against  
COLLINS.

The defendants denied that the plaintiff, as rector of *Sedgefield*, was entitled to tithe herbage or agistment tithe for all barren and unprofitable cattle by them severally fed and depastured on any of their lands in the township of *Morden*, for that long before any restraining statutes were made to prevent the alienation of lands and tithes belonging to the church, the *Bishops of Durham* for the time being were seised in fee, in right of their bishopric, of all their lands in the said township; that before and until such lands were so alienated from the said bishopric, the said *Bishops of Durham* being so seised thereof in fee, did, time then out of mind, for themselves and their tenants hold and enjoy the said lands discharged from the payment of all tithe herbage or agistment tithe for barren and unprofitable cattle fed and depastured thereon, and had ever since so held and enjoyed the same; that no tithe herbage or agistment tithe for any barren and unprofitable cattle fed and depastured upon the lands in the said township, or any part thereof, had, at any time whatever, been paid to or demanded by any rector of *Sedgefield* until the plaintiff had thought fit to demand the same: and they submitted, that the plaintiff's demand was the more unreasonable, inasmuch as the yearly profits of the rectory amounted to one thousand pounds a-year; and that such ample provision had been made by a former bishop of *Durham* who had founded and endowed the said parish church; and that ever since the *Bishop of Durham* for the time being had been, and that the present *Bishop* was then the patron thereof. They then further insisted, that if the lands in the said township of *Morden* were not, in manner before set forth, legally discharged from payment of tithe herbage or agistment tithe, yet that the occupiers thereof were discharged therefrom by a *modus* of sixteen shillings a-year, which had been immemorially payable at *Michaelmas* yearly, or so soon after as demanded, to the rector of *Sedgefield*, in lieu of the tithes of hay yearly arising upon all the lands in the said township, and in lieu of all tithe herbage or agistment tithe for all barren and unprofitable cattle fed and depastured thereon, or on any part thereof.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel on



THE BISHOP  
OF OXFORD  
against  
COLLINS.

both sides ; and reading several proofs taken in the cause ; and on debate of the matter ;

THE COURT ordered the deputy remembrancer to take an account of what was due to the plaintiff from the defendants for the tithe herbage or agistment tithe of and for all manner of barren and unprofitable cattle by them severally fed and depastured on their lands in the township of *Morden* during the several years demanded by the bill ; and that they do pay the plaintiff his costs (a).

PARKER, Chief Baron.  
SMYTHE, Baron.  
ADAMS, Baron.

(a) In the case of the *Bishop of Oxford v. Richmond*, the rector of *Sedgefield*, in the county of *Durham*, also claimed all tithes, both great and small, in the said parish, and particularly the tithe herbage or agistment tithe for all barren and unprofitable cattle fed and depastured in the township of *Bradbury*. The defendants put in the like answer as the defendants in the above cause, except that they set up no *modus* for their lands in the said township. The plaintiff replied ; the defendant rejoined ; and witnesses were examined on both sides ;

and upon reading several proofs taken in the cause ; and on full debate ; THE COURT, on the tenth of *December* 1771, ordered the deputy remembrancer to take an account of what was due for the tithe herbage or agistment tithe of and for all manner of barren and unprofitable cattle fed and depastured by the defendants on their lands in the township of *Bradbury* during the years demanded by the bill ; and that the defendants do pay the plaintiff his costs.

MICH. TERM,  
12. GEO. 3.

THE BISHOP OF OXFORD against AYRE.

*Durham*, 13th December 1771.

The rector of *Sedgefield*, in *Durham*, claims the agistment tithes arising in the townships of *Sedgefield* and *Bradbury*.

THE rector of *Sedgefield*, in the county of *Durham*, claimed all tithes great and small, and particularly the tithe herbage or agistment tithe for all barren and unprofitable cattle fed and depastured in the townships of *Sedgefield* and *Bradbury* ; and prayed, that the defendants might account for the said agistment tithes, and be decreed to pay the plaintiff the single value thereof.

The defendants say, that there are divers copyhold lands in the township of *Sedgefield*, which were parcel of the manor of *Bishop Middleham* ; and that they had been immemorially held by the See of *Durham* tithe free.

The defendants admitted, that the plaintiff was rector of the parish, and entitled to the several great and small tithes arising therein ; but they denied, that he was entitled to tithe herbage or agistment tithe from all the occupiers of lands therein, or in the titheable places thereof, for all barren and unprofitable cattle fed and depastured on their lands since his induction to the rectory ; and on the contrary insisted, that the *Bishop of Durham* had, for eighteen years past, been seised in fee, in right of his bishopric, of the manor of *Bishop Middleham*, in the said county ; that divers of the lands lying in the township of *Sedgefield* were parcel of the said manor ; that they had, time out of mind, been demised by copy of court roll at certain yearly rents, subject

to certain fines and duties and other services to the said bishop ; that he and his predecessors being so seised in fee of the said manor had, time out of mind (by copy of court roll of lands and grounds within the said township of *Sedgefield*), for himself and themselves, and his and their tenants, held and enjoyed the said lands discharged of and from the payment of all tithe herbage or agistment tithe of or for barren and unprofitable cattle fed and depastured upon their said lands ; that *Richard Lord Bishop of Durham* was then seised in fee, in right of the said bishopric, of and in divers other lands lying in the said township of *Sedgefield* ; that he and his predecessors being so seised in fee thereof of such other lands not demised by copy of court roll, had time out of mind, for himself and themselves, and his and their tenants and farmers thereof, held and enjoyed the same discharged of and from the payment of all tithe herbage or agistment tithe for barren and unprofitable cattle fed and depastured on the said lands and grounds ; that all the residue of the said lands in the township of *Sedgefield* did then belong to divers owners thereof, who were seised in fee of the same ; that long before any restraining statutes were made to prevent the alienation of lands and tithes belonging to the church, the bishops of *Durham* for the time being were seised in fee thereof, in right of their bishopric, of and in all the residue of the said lands lying in the said township of *Sedgefield* ; and that before and until the said lands were so alienated from the said bishopric, the lord bishops of *Durham* for the time being, being so seised in fee thereof, did, time then out of mind, for themselves and their tenants and farmers thereof, hold and enjoy the said lands discharged from payment of all tithe herbage or agistment tithe for barren and unprofitable cattle fed and depastured upon the residue of the said lands and every part thereof ; that before the said alienation the same were then held and had ever since been held and enjoyed so discharged accordingly ; that no tithe herbage or agistment tithe for barren and unprofitable cattle fed and depastured on the residue of the said lands and grounds in the said township of *Sedgefield*, or any part thereof, had, at any time whatever, been paid to or demanded by any rector of the said parish, until the plaintiff thought fit to demand the same, which they thought unreasonable, as the living was of the great yearly value to him of one thousand pounds, which ample provision was made to him and his predecessors rectors thereof by a former bishop of *Durham*, who founded and endowed the said parish church ; and that ever since the foundation, the bishops of *Durham* for the time being had been, and the present bishop then was the patron thereof.

THE BISHOP  
OF OXFORD  
against  
AYRE.

that the *See of Durham* was also seised in fee of certain freehold lands in the said townships, which they also held tithe free ;

that the residue of the lands in the said townships belonged to private persons, and had been immemorially held free from agistment tithes.

The defendants set forth the several freehold and copyhold lands and grounds which they severally held within the townships of *Sedgefield* and *Bradbury* ; the yearly values of the same ;

The defendants set forth the lands in their respective occupations.

THE BISHOP  
OF OXFORD  
against  
AYRE.

of whom they so held them; and what parcel were of the manor of *Bishop Middleham*; and they also set forth the number and species of barren and unprofitable cattle they had fed thereon. They admitted, that the plaintiff had caused applications to be made to them for the said tithes; and that they had refused to comply with or pay him the tithes demanded by his bill, or make him any satisfaction for the same, they apprehending that he was not entitled thereto.

The cause  
heard.

The plaintiffs replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides; and reading several proofs taken in the cause; and also copies of court rolls of the manor of *Bishop Middleham*; and upon full debate;

The agistment  
tithes of the  
freehold lands in  
the townships of  
*Sedgefield* and  
*Bradbury* de-  
stred.

THE COURT ordered the defendants to account for the tithe of agistment of all barren and unprofitable cattle by them respectively fed and depastured upon the freehold lands by them severally occupied in the township of *Sedgefield*; that the defendant *Ayre* do also account for the tithes of agistment of all barren and unprofitable cattle by him fed and depastured upon the freehold lands by him occupied in the township of *Bradbury*, in the said parish of *Sedgefield*; and that the defendants do pay the plaintiff his costs.

An issue direct-  
ed to try, whe-  
ther the *See of*  
*Durham* had im-  
memorially held  
the copyhold lands  
tithe free.

THE COURT further ordered, that as to the copyhold lands mentioned in the answers of *Ayre, Taylor, and Watson*, to be in their occupations within the townships of *Sedgefield* and *Bradbury*, or either of them, a trial at law should be had upon the following issue, viz. "Whether the *Bishop of Durham* and his predecessors bishops of *Durham* for the time being, being seised in fee of the manor of *Bishop Middleham*, in the county of *Durham*, have time out of mind, for himself and themselves, and for his and their tenants and farmers, by copy of court roll of lands and grounds lying and being within the township, vill, hamlet, precinct, and territories of *Sedgefield*, in the said county, and of every or any part or parcel thereof, held and enjoyed such lands and grounds acquitted, privileged, and discharged of and from the payment of all manner of tithe herbage or agistment tithe of or for all barren and unprofitable cattle fed and depastured upon the said lands and grounds and every part and parcel thereof." The plaintiff in equity to be plaintiff at law; to be tried by a special jury; and further directions to be reserved till after the trial and report, &c.

A verdict in fa-  
vour of the de-  
fendants.

In pursuance of the said decree, the issue was tried, and a verdict was found thereon for the defendants, viz. "that the *Lord Bishop of Durham* for the time being, being seised in fee of the manor of *Bishop Middleham*, in the said county of *Durham*, had time out of mind, for himself and themselves,

" and



"and for his and their tenants, by copy of court roll of lands  
 "and grounds lying and being within the township, village,  
 "hamlet, precinct, and territories of *Sedgefeld*, in the said  
 "county, and of every part and parcel thereof, held and  
 "enjoyed such lands and grounds acquitted, privileged, and  
 "discharged of and from the payment of all tithe herbage or  
 "agistment tithe of and for all barren and unprofitable cattle  
 "fed and depastured upon the said lands and grounds and every  
 "part and parcel thereof."

THE BISHOP  
 OF OXFORD  
*against*  
 AYRE.

On the sixteenth of *July 1773*, upon reading the said decree  
 and *posse*, and hearing counsel on both sides,

THE COURT ordered the bill to be dismissed, with costs both  
 at law and in this court, in respect of the tithes of barren and  
 unprofitable cattle fed and depastured on *the copyhold lands* men-  
 tioned in the answers of the defendants *Ayre* and others to be  
 in their occupations within the said townships of *Sedgefeld* and  
*Bradbury*, or either of them.

The bill dismis-  
 sed as to the a-  
 gistment tithes  
 of *the copyhold*  
*lands*.

SMYTHE, *Chief Baron*,  
 ADAMS, *Baron*.  
 PERROTT, *Baron*.  
 EYRE, *Baron*.

### HICKS *against* TRIESE.

*Cornwall*, 4th *July 1771*.

TRIN. TERM,  
 11. GEO. 3.

THE rector of *Blisland*, in the county of *Cornwall*, claimed  
 all tithes great and small, *Easter* offerings, and mortuaries,  
 yearly arising therein, particularly the tithes of wheat, barley,  
 oats, rye, and other sorts of corn and grain; of garden stuff,  
 fruit, hay, grass; of a mill, formerly a tucking mill, but which  
 the defendant had converted into a corn mill, at which he had  
 ground corn; of calves, colts, lambs, poultry, pigs, wool, eggs,  
 milk, honey, potatoes, turnips, and other titheable things.

The rector of  
*Blisland*, in *Corn-*  
*wall*, claims the  
 tithes of two  
 mills and other  
 titheable mat-  
 ters in kind.

The defendant said, that the plaintiff had acted as rector of  
*Blisland*, and as such had received all the great and small tithes,  
*Easter* offerings, and mortuary fees until the year 1764; that in  
 the year 1764 he had, by some deed, granted all his right therein  
 to *G. Brown*; and that *G. Brown* had received the same to his  
 own use; that he, the defendant, had, on his father's death in  
*November 1755*, entered into, and had ever since been, and still  
 was, seised of in fee, as heir at law, or as devisee, or as executor  
 of his father's will, of the several lands and tenements in *Blisland*,  
 as in his answer mentioned; that he occupied some parts thereof  
 himself, and that he had leased out the remainder; that his  
 father, in his life-time, had come to an agreement with the  
 plaintiff, in which he had covenanted for himself, his heirs, &c.

The defendant  
 claims the ad-  
 vantage of a deed  
 of composition  
 entered into be-  
 tween his father  
 and the plain-  
 tiff;

to

Hicks  
against  
Trixel.

that from  
1761 he had set  
out his tithes in  
kind ;

that he had not  
agisted any cat-  
tle, except on  
lands which had  
paid tithe ;

that he was not  
an inhabitant  
of *Blisland* ;

that there is a  
*modus* of 4s. 4d.  
a-year in lieu of  
the lands called  
*Pengelly* ;

to pay to the plaintiff, and the plaintiff had agreed to accept an annual sum of money, by way of composition, for all the tithes great and small, *Easter* offerings, and mortuaries, which should be due to him in every year ; that the said agreement was reduced into writing ; that his father, in pursuance thereof, had annually paid to the plaintiff, for some years before his death, thirty-two pounds, sixteen shillings, as a composition for the said great and small tithes, offerings, and mortuary fees ; that he, the defendant, from and after his father's death until the year 1761, had regularly paid the same, or caused it to be tendered to the plaintiff ; that therefore he was not compellable to account for any of the tithes or offerings ; and that he expected to have the same benefit as if he had pleaded the same in bar to the relief prayed by the bill ; that from 1761 the plaintiff had insisted on having his tithes in kind ; that from and after the said year he had caused to be set out fairly and justly the tithes of corn and grain of every kind whatever on the lands occupied by him, except on such lands for which a *modus* was payable ; that the plaintiff had carried away and sold the tithes so set out ; that he could not discover what part of the lands in his occupation had, during any of the years, been mowed, or how much hay, grass, fruit, or garden stuff, he had in each year, or the yearly value thereof, as he did not live in the said parish, and had left the management of his farms to his steward ; but that he had ordered the same to be set out in kind, and notice to be given to the plaintiff thereof ; that the same was done ; and that the tithes had, from time to time, been received as they became due by the plaintiff's tithe gatherer, and carried from off the premises ; that from and after 1761 he had not agisted or depastured on the lands by him occupied any cattle for hire or sale, nor had he received any money or other reward for the same, save only for such cattle as were agisted on ground that had yielded tithe before ; that he usually resided in the parish of *Dulow* ; that he was not a parishioner of *Blisland* ; and that therefore no offerings were due from him to the plaintiff, but that if any were due he would account for the same ; that he had never subtracted any tithe, great or small, in any of the years, or any *Easter* offerings or mortuary fees during that time, as was truly suggested in the bill ; that he had never insisted on or pretended that any *modus* in lieu of any tithes prevailed throughout the parish ; but that he and all the other occupiers, tenants, and farmers for the time being of the messuage or tenement called *Pengelly*, in the said parish of *Blisland*, had been accustomed, from time beyond memory, yearly and every year, on the twenty-ninth day of *September*, to pay to the rector of the said parish, or his farmer, the annual sum of four shillings and fourpence in full satisfaction and payment of all tithes, both great and small, yearly payable of and from the said messuage or tenement, and also for all *Easter* offerings and

and mortuary fees for the occupiers of the said messuage to the rector for the time being; and that the plaintiff and all other the rectors thereof had always been, for time immemorial, entitled to, and had actually received the annual sum of four shillings and fourpence yearly and every year on the said twenty-ninth day of *September*, in satisfaction and payment of all and singular the said tithes. He further said, that he and all other the occupiers and tenants for the time being of an ancient corn mill, called *the Queen's Mill*, in the said parish, had held and enjoyed the same discharged from all tithes whatever from the mulcture thereof. He denied that he had ever refused to come to a fair account with the plaintiff, and said that he was still willing to account as the court should direct. He admitted, by his further answer, that the plaintiff was rector of the parish, and as such entitled to the tithes in the bill mentioned, or to such *modus* or prescriptive payments as, for time beyond memory, had been due and payable in lieu of tithes as to particular tenements: and he set forth the names of the messuages and tenements belonging to him which were charged with the poor rates from the time of his father's death, and the yearly values of the same lands, and of the tithes, great and small, arising thereon; but hoped the plaintiff was not entitled to the tithes in kind on the said lands, or any of them, by reason of the said agreement and the tenders made pursuant thereto. He also said, that he occupied such parts of the messuages and lands as stated in his answer; that the same had been in his occupation during the time mentioned in the bill; and that he occupied *the Queen's Mill* and *Strewland Mill* from his father's death until *September* 1762, when they were leased out; and so sets out his other lands, and those leased, and also what cattle he had agisted, &c. He further said, that *Strewland Mill* was a very ancient mill, and had been a mill, as he believed, from time beyond memory; and that no tithe had ever been paid or payable for the same. He denied, that the said mill was erected by his father; but he admitted, that it was anciently, and until he became owner of it on his father's death, a *tucking mill*; and that about ten years ago it was, by his direction, converted into an *oat mill*, and used for the sole purpose of grinding oats for his hounds. He denied, that it was ever used for a *grist mill* even in a single instance. He also denied, that he had been guilty of any subtraction of tithes from the plaintiff, save only on account of an ewe and two lambs. He also said, that he was owner of a water corn mill in the said parish, called *the Queen's Mill*, and had occupied it from his father's death till *Midsummer* 1762, when it was let to a tenant; and that within that space of time divers quantities of corn had been ground at the said mill, but knew not the amount nor value of the profits; but he insisted, that *the Queen's Mill* was an ancient mill for time beyond memory, and

Hicks  
against  
Tanner.

that *Queen's Mill*  
is an ancient  
corn mill;

that he occupied  
another mill,  
which had been  
a *tucking mill*,  
but that he had  
converted it in-  
to an *oat mill*;  
and that it never  
was used for any  
other purpose  
than grinding  
oats for his  
hounds.



*against*  
TASSE.

and that for all that time no tithes whatever had ever been paid or payable for the same, and that therefore no tithes can be now legally demanded for the same. He denied, that he ever refused to come to a fair account; and said, that he was willing so to do. He also denied, that any sum of money whatever was due from him to the plaintiff for *Easter* offerings or mortuary fees; and said, that he could not set forth his other titheable matters, as he had trusted his affairs to the management of his steward.

The cause  
heard.

The plaintiff replied; the defendant rejoined; and divers witnesses were examined on the defendant's part; and two of his witnesses were cross-examined on the part of the plaintiff; and now upon hearing counsel on both sides; and on reading the proofs taken in the cause;

The two mills  
decreed to be  
tithe free; the  
one as being an  
ancient mill, and  
the other as  
yielding no pro-  
fit.

It appearing to the Court, by the proofs taken in this cause, that the mill called *Queen's Mill* had been an ancient mill existing from time beyond memory, and consequently that no tithes were due to the plaintiff for the same; and that the said other mill in the pleadings mentioned, formerly a *tucking mill* and converted by the defendant into a *mill for grinding corn*, had been used by the defendant for grinding oats for his hounds, and for no other purpose whatever; and that therefore no profit had been by him received for such grinding, and of consequence that no tithes were due to the plaintiff for the same.

The tithes of the  
other matters  
demanded by  
the bill decreed.

IT WAS THEREUPON ORDERED, that the bill as to the said tithes respectively be dismissed with costs; that the deputy remembrancer take an account of what was due from the defendant for the value of the other titheable matters demanded by the bill during the time therein mentioned, and for *Easter* offerings during so many years of the time in the bill mentioned as the defendant was an inhabitant of the parish of *Blisland*; and that the defendant do pay the plaintiff his costs, except as aforesaid.

The deputy remembrancer made his report, dated the twenty-fourth of *July* 1772; and upon hearing counsel for the plaintiff; and reading the decree and report without exceptions; the said report was ratified; and the defendant ordered to pay to the plaintiff sixty-one pounds, one shilling, and eightpence, for his tithes and offerings, together with subsequent costs.

MICH. TERM,  
12. GEO. 3.

SNOWDEN, D. D. *against* SHOTTON.

*Northumberland*, 11th December 1771.

The vicar of  
*Ponteland*, in  
*Northumberland*,  
is entitled to a  
giftment tithe of

THE bill stated, that, from time beyond memory, the vicars of the vicarage and parish church of *Ponteland*, in the county of *Northumberland*, by virtue of an ancient endowment barren and unprofitable cattle, and to the tithe of calves in kind.

of

SNOWDEN  
against  
SHOTTON.

of the said vicarage, or by some prescription or custom which had obtained in the said parish, of right enjoyed several distinct kind of tithes, and particularly the tithe agistment or pasturage of barren and unprofitable cattle, and of calves yearly arising therein ; that the plaintiff *Snowden* then was, and for seven years past had been, vicar thereof ; that in the year 1762 he demised to the plaintiff *Lumsdon* all his vicarial tithes for six years ; that he had received the same for that time, though he had never executed a lease to him ; that during the said time the defendants had and still occupied divers lands in the parish ; that they had kept thereon oxen, horses, mares, geldings, foals, and other dry, barren, and unprofitable cattle ; that they had also fed sheep ; that the said sheep, subsequent to the shearing of them, were, in each year, fatted and depastured upon their said lands, and long before shearing-time sold for slaughter ; that the defendant *Shotton* had also depastured on his lands cows which had calves, and sheep which he had taken in hire ; but that they had absolutely refused to account for the tithes thereof, or to make them any satisfaction for the same. The bill therefore prayed an account.

The defendants denied, that the vicar was, to their knowledge, so entitled to the tithes of agistment of barren and unprofitable cattle ; but admitted, that he was entitled to the tithes of calves bred from cows kept in the parish, but not otherwise than as after-mentioned ; and said, that he was, by ancient custom, only entitled to three halfpence yearly for each new kell cow or cow which had a calf or gave milk ; to one penny yearly for each farrow or dry cow ; and to fourpence for each foal foaled in the parish ; and that no tithes of agistment had ever been claimed by or paid to any person until the said plaintiffs claimed them.

The defendant *Shotton* admitted, that he occupied *Elandball Farm* and *Dinnington Farm*, in the said parish ; and said, that he had not kept on *Elandball Farm* any more oxen, horses, or other barren and unprofitable cattle than were necessary for and employed in working and tilling the said farm ; and he enumerated the species and quantity ; that he had paid the tithes of lambs and wool to the lay impropriator ; that the plaintiff was not entitled to any tithes of calves ; that in one year he had seven milch cows, and had paid the accustomed sum of three halfpence to the plaintiff for each cow ; that the plaintiff *Lumsdon*, in the year 1768, had demanded the tithes due for that year ; that he had paid him all, except for the tithe of his calves ; that he offered him the ancient and accustomed payment of thirteen shillings and fourpence in lieu of the tithe calf which he had sold ; but that he, as well as the plaintiff *Snowden*, had refused to receive the same, alledging, that it was above a *modus*, and not the value of a calf ; that he again tendered the same in the year

SNOWDEN  
against  
SNOTTON.

year 1769, and which was again refused by them. He further said, that his farm at *Dinnington* was parcel of and situate within the township of *Dinnington*, in the said parish; that all the lands in that township had constantly paid an annual *modus* of twenty shillings in lieu of tithe hay; that he had constantly paid two shillings as the ancient settled proportion of the said *modus* for his farm there; that the said lands had, during the time the plaintiff had been vicar, been either tilled or mowed; and that he had never kept, on any part of his said farm, any horses, mares, geldings, oxen, cows, or any other cattle, except such as were employed in working the farm and two milch cows yearly, for each of which cows and foals the ancient and accustomed payment had been constantly paid to the plaintiffs; and he set forth his several species of tithes he had yearly.

The defendant *Smith* said, that he had occupied *Milburne Grange Farm*, in the said parish, for five years; that the plaintiff *Snowden* had demised all his glebe lands and tithes to the plaintiff *Lumsden*; that he, the defendant, very soon after such demise, agreed with *Lumsden* to take all the vicarial tithes (except tithe hay) belonging to the vicar, arising on his said farm, at the yearly rent of one pound, five shillings; that he had, from time to time, regularly paid the same; that in 1767, *Lumsden* gave him the following receipt: "Received, the first of November 1667, of Mr. William Smith, the sum of one pound, five shillings, being in full for tithe calves and all petty tithes of his said farm." He further said, that *Anne Bynne*, by virtue of a lease from *Merton College*, in *Oxford*, was entitled to all the great tithes of the said parish, and that he had agreed with her for the tithes of lambs and wool of the said farm at three pounds a-year. He also said, that his farm belonged to *Mr. Horsley*, who had always and then paid to the vicar of the said parish a *modus* of one shilling and sixpence in lieu of tithe hay of the said farm. He further said, that he had a foal yearly from a brood mare; and he admitted, that he must have paid fourpence for each foal, according to the custom of the parish; but said, that such ancient payment was included in his yearly rent of one pound, five shillings. He also said, that he had fed and depastured yearly on the said farm several sheep, which subsequent to the clipping were, in the winter season only, fattened and depastured thereon; that they were in the winter, and before the shearing time, slaughtered and sold, he being a butcher; that in the spring time he replaced such sheep so killed with others that were shorn the next shearing time; that the ewes were kept on the said farm till they had lambed; and that he had never kept on his said farm any sheep for which he did not pay the tithe of wool and lambs yearly to the impropiator under his rent of three pounds: and he set forth the



number of cattle he had depastured on his said farm; and insisted, that the plaintiffs were not entitled to any payment or satisfaction for such agistment or pasturage, which he admitted had been demanded of him.

SNOWDEN  
against  
SHOTTON.

The defendant *Forster* said, that he occupied a farm at *Milburn Grange*; that it was parcel of the grounds belonging to *Mr. Horsley*, for which an ancient *modus* of one shilling and sixpence was yearly payable to the vicar in lieu of tithe hay; that the whole of his farm was then pasture: and he set forth the number of the cattle he had fed thereon; and insisted, that the tithe of agistment was covered by the *modus* or discharged by two other customary payments of one penny and three halfpence; and that he had tendered the ancient accustomed sum of thirteen shillings and fourpence for each tithe calf, which the plaintiff had refused to accept.

All the defendants insisted, that there was an ancient custom in and throughout the parish, that in case any occupier of lands therein thought proper, at any time before *All Saints Day* in any year, to sell his calves bred in the parish, he might sell them, on payment to the vicar on *All Saints Day*, or as soon after as he chose to demand the same, thirteen shillings and fourpence, in lieu of every tithe calf; that in case he had only four in one year, the vicar was not entitled to any tithe thereof; that if he had five, then he was entitled to half a calf; if six, to a whole one; if fifteen, to a calf and a half; if sixteen, to two; if more than sixteen, to every tenth calf; but that if any occupier kept his calves until *All Saints Day*, then the vicar was entitled to draw the tithe of such calves in kind; that such custom had been immemorially observed throughout the parish; that they were nevertheless willing to put an end to the said custom; but that it ought to be totally abolished or wholly maintained: and they added, that the usual time in the said parish of clipping the wether sheep was about the month of *May*, and the ewe sheep about the month of *June*.

The plaintiffs replied; the defendants rejoined; and witnesses were examined only on the part of the plaintiffs; and none appearing for the defendants;

THE COURT, on reading the answer, and an order whereby they undertook to appear *gratis*, ordered the deputy remembrancer to take an account for the tithe of agistment of all barren and unprofitable cattle fed and depastured on their respective farms; and also for the tithes of calves for the several years as demanded by the bill, unless cause were shewn to the contrary.

The cause being continued in the paper came on to be heard on the third of *February* 1772, the defendants having paid the

SNOWDEN  
against  
SNOTTON.

costs of the day ; and upon hearing counsel on both sides ; and reading an order to prove exhibits for the plaintiffs ; an ordination of the vicarage of *Ponteland*, in the county of *Northumberland*, and diocese of *Durham*, dated 1303 ; the decree ; and on full debate of the matter ;

THE COURT ordered the decree, dated the eleventh day of *December* last, to be made absolute and binding on the defendants ; and the deputy remembrancer, in taking the account, to distinguish in his report, how much was due to *Snowden*, for the tithes for the time preceding the lease, and subsequent thereto, and what was due to *Lumsdon*, for the tithes due to him, under and during the term in the lease.

The deputy remembrancer made his report, dated the second of *December* 1776, and on the twelfth of *December* 1776, the report was ratified and confirmed ; and the defendants ordered to pay to the plaintiff one hundred and four pounds, four shillings, and elevenpence halfpenny, for his tithes, due from them respectively ; and eighty pounds, eleven shillings, for his taxed costs ; and also to pay him his subsequent costs.

SMYTHE, *Chief Baron*.  
EYRE, *Baron*.  
HOTHAM, *Baron*.  
PERRY, *Baron*.

MICH. TERM,  
12. GEO. 3.

### WARTON against STEPHENSON.

*Durham*, 12th *December* 1771.

The impropriator of *Stranton*, in *Durham*, claims the tithes of agisting barren and unprofitable cattle.

THE impropriator of the parish church of *Stranton*, in the county of *Durham*, claimed all manner of tithes, great and small, yearly arising therein, except the tithes of hay, wool, lambs, calves, foals, pigs, geese, and hens, to which the vicar of the said parish, for the time being, was entitled ; and stated, that the defendant *Stephenson* had, for four years past, occupied divers lands therein ; that he had fed and depastured in each year thereon several oxen, runts, bullocks, heifers, cows, horses, and other barren and unprofitable cattle, and a number of sheep, as well of his own as of others, taken in to agist for hire ; that he had sold and disposed of such cattle after being fattened, and the sheep after being sheared, and before they were sheared again at a great advantage, without paying the tithes thereof ; that he had not only neglected in each of the said years to give him an account of his tithes of agistment so due, or to make him any satisfaction for the same, but had also refused to permit him to inspect and examine the stocks of cattle which he had so kept, fed, and depastured on his lands

lands in the parish, but had concealed the same, and had also refused to discover the particulars or values thereof, under the pretence that no tithes were due to him for the same, but a *modus*, or that the vicar was entitled thereto. The bill therefore prayed, that the plaintiff's right to the said tithes of agistment might be established, and that the defendants, the occupiers, might be decreed to account with and pay the plaintiff for all such tithes of agistment, as had grown due during the said four years last past.

WARTON  
against  
STEPHENSON.

The defendant *J. Gagnier*, clerk, said that on the twentieth of June 1745, he was inducted into the vicarage of *Stranton*, and had thereby become well entitled to the tithe hay, and all vicarial tithes arising therein, such as wool, lambs, calves, foals, pigs, geese, hens, all sorts of poultry, mustard, and potatoes; that he and his predecessors had received the said tithes in kind, for time immemorial, or some composition in lieu thereof; that for ten years past he had also received the tithes of turnips and rape, none of which, before then, had been produced in the parish; that the plaintiff was, and for ten years past had been seised in fee of the rectory impropriate of *Stranton*; that he was thereby entitled to all manner of great tithes, except hay, yearly arising therein, but not to any small tithes; that he was not entitled to the tithes of agistment of barren and unprofitable cattle and sheep, the said tithe of agistment being a small tithe, and belonging to him as vicar; for that he as vicar, being entitled to the tithe of hay, ought not to be deprived of the said tithe, by the grass being eaten before it was sufficiently mature to make into hay.

The vicar denies the impropriator's right to agistment tithes, and contends that they belong to him as vicar.

The other defendants said, that they knew not whether the plaintiff was lawfully seised in fee of the rectory; that they did not believe that he was entitled to receive, from the occupiers of lands within the said parish, the tithes of agistment of all barren and unprofitable cattle and sheep by them kept, fed, and depastured therein, but that, on the contrary, they conceived the vicar was entitled thereto; that they had, for several years past, been severally occupiers of messuages and lands in the parish, but did not remember that they had kept, fed, or depastured thereon, any barren or unprofitable cattle or sheep, or that any tithes of agistment had ever been paid, or any satisfaction in lieu thereof made to any person whatsoever; that within the said rectory or parish, there were two separate and distinct townships viz. *Stranton* and *Seaton Carew*, the limits and bounds whereof were well known; that *J. Wilson*, and several others, who were all freeholders and owners of several messuages, lands, and grounds within the township of *Seaton Carew*, were seised of, and well entitled to all tithes, great and small, yearly arising therein; that they, and all those under whom they claimed, had enjoyed such tithes, save only some

The landholders also say, that agistment tithes belong to the vicar;

that the parish of *Stranton* consists of the township of *Stranton* and *Seaton Carew*;



WARTON  
— against  
STEPHENSON.  
and that *J. Wilson* is improprietor of the tithes of *Seaton Carew*.

small tithes which were paid to and claimed by the vicar of *Stranton*; and that the plaintiff had never taken or received, to their knowledge, any tithes within *Seaton Carew*, or any composition for the same. They denied, that they had refused to let the plaintiff inspect or examine their stocks of cattle, or that they had insisted upon any *modus* whatsoever, in lieu of tithes; and said that they believed that the plaintiff had claimed and received the tithes of all corn and grain yearly arising within *Stranton*, but denied that they had ever subtracted such tithes or any part thereof, or that they were indebted to him in any wise whatsoever, for or on account of any tithes.

The cause heard.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides; and on reading and order to prove exhibits, to wit, a copy from the rolls of letters patent, dated the eighteenth of *November*, in the fifth year of *James the First*, being a grant of the rectory of *Stranton*, *inter alia*, to *P. Chewte* and *R. Moore*; a copy of an indenture, dated the tenth of *May* 1609, between *P. Chewte* and *R. Moore* to *J. Dodsworth*, being a grant of the rectory of *Stranton*; an indenture, dated the twenty-fifth of *June* 1729, executed by *J. Dodsworth* to *R. Wharton*, being a grant of the said rectory of *Stranton*; the deposition of *Stephen Barber*, and others; and on full debate;

The bill dismissed.

THE COURT ordered the bill to be dismissed with costs.

HILARY TERM  
12. GEO. 3.

TRAVIS against GILL.

*Chester*, 27th *January* 1772.

Potatoes are a small tithe.

THE vicar of *Eastham*, in the county of *Cheeshire*, claimed the tithes of potatoes.

The defendant admitted, that the plaintiff was vicar and entitled to the tithes of hay, and all small tithes; but said, that he did not know whether the tithe of potatoes was a great or a small tithe, as no tithe of potatoes had ever before been claimed, or paid in the parish; and he stated the quantity of land which he had, in each year, planted with potatoes; and said, that he had consumed a great part thereof in his own family, and had sold the remainder, but that he could not tell the value of the tithes thereof.

The plaintiff replied; the defendant rejoined; but no witnesses were examined on either side; and upon hearing counsel on both sides;

THE COURT ordered the defendant to pay to the plaintiff the sum of forty shillings, in full for two years tithes of the potatoes

potatoes planted by him, and five pounds costs, the plaintiff agreeing to accept the same.

TRAVIS  
against  
GILL.

PARKER, *Chief Baron.*  
SMYTHE, *Baron.*  
PERROTT, *Baron.*

### HEATON *against* MILLER.

*Gloucestershire, 27th January 1772.*

HILARY TERM  
11. GEO. 3.

THE bill stated, that the plaintiff, in the month of *January* 1769, was instituted and inducted into the rectory and parsonage of *Minchinhampton*, in the county of *Gloucester*, and had thereby become entitled to all the tithes, both great and small, arising therein; that the defendants were farmers in the parish, and for several years past, had jointly occupied a farm called *Hampton Down*, otherwise *Aston Down*, or lands upon, or part of, or near to *the Down*, in the said parish; that the said farm and lands had been, for time immemorial, occupied by the proprietors thereof as a *sheep walk* only, until it was several years ago converted by the proprietors into tillage; that the defendants, in the year 1769, had sowed, reaped, and carried away great quantities of wheat, barley, oats, rye, beans, and pease from the said farms and lands, without setting out the tithes thereof, or making any satisfaction for the same. The bill therefore prayed, that they might set forth how much corn and grain they had reaped and carried away from the said farm in the year 1769, and pay the plaintiff the just value of the tithes thereof, and state any *modus* or composition they might insist upon in lieu of such tithes.

The rector of *Minchinhampton*, in *Gloucestershire*, is entitled to tithes in kind, both great and small, for all titheable matters arising on *Hampton Great Down*, *Hampton Little Down*, and *Aston Down*.

The defendants admitted, that the plaintiff was rector, and well entitled to all the great and small tithes of the parish, and the titheable places thereof, except to the tithes in kind of *Hampton Great Down*, and *Hampton Little Down*, parcel of their farm. They also admitted, that they were, in the year 1769, joint occupiers of the farm; and that the several parcels of land called *Gilliays*, *Wakenhill*, *the Ox Leaze*, *the Mead*, *Hampton Great Down*, *Hampton Little Down*, and *Aston Down*, were all parts thereof; and they denied that any other part of the said farm lay within the said parish, or the titheable places thereof, or that they had any other lands in the parish; and insisted, that the rector was, by immemorial custom, only entitled to ten shillings and sixpence, or a todd of wool, and not to any thing else, in lieu of great and small tithes of corn, grain, hay, and other titheable matters yearly arising out of the lands called *Hampton Great Down*, *Hampton Little Down*, and *Aston Down*; that no tithes had ever been demanded or received in kind of

HEATON  
against  
MILLER.

any corn, grain, hay, or other matters arising out of those lands; that they had tendered such customary payment to the former rector; that he had refused to receive it, only because it was of small value; and that a *Mr. Shephard*, his nephew, whom he had left sole executor, and who was entitled to the perpetual advowson of the rectory, expectant upon the death of the plaintiff, had accepted of the said *modus* and customary payment, for the said two years preceding his testator's death, and had given them a receipt for the same; and they denied, that the parcels of ground in the bill mentioned had ever, within the memory of man, been occupied as a *sheep walk*, but that on the contrary, it had always been in tillage, as it then was; and they set forth what corn they had grown on their lands; and admitted, that the plaintiff had applied to them to pay their tithes in kind for corn sown on *Hampton Great Down*, and that they had refused to pay the same, as nothing was due but the aforesaid *modus*, which they had tendered in vain. They further said, the plaintiff had taken the tithes in kind of all corn and grain, and other titheable matters which had arisen on the farm, except the tithe of the barley which had arisen on *Hampton Great Down*; and that they then were, and had always been ready to pay the ten shillings and sixpence, in lieu of tithes in kind of the said barley.

The plaintiff replied; the defendants rejoined; but no witnesses were examined on either side; and upon hearing counsel on behalf of the plaintiff, and none appearing for the defendant; and reading an affidavit of due service of *subpœna* to hear judgment; and reading the answer; and the plaintiff's counsel praying a decree, according to the prayer of the bill;

THE COURT ordered the deputy remembrancer to take an account of all tithes due from the defendants to the plaintiff for the time demanded by the bill, and that they pay the same, with costs, unless cause was shewn to the contrary; and on the seventh of *May 1772*, no one appearing for the defendant, the said decree was made absolute.

HILARY TERM  
12. GEO. 3.

EDWARDS against BURROUGHS.

*Gloucestershire, 3d February 1772.*

The rector of *Matsin*, in *Gloucestershire*, claims the tithes of the parish in kind.

The defendants set up a *modus* of 20l. a-year in lieu thereof.

THE rector of *Matsin*, otherwise *Mattisden*, in the county of *Gloucester*, claimed all and singular the tithes, both small and great, of every species, kind, or denomination whatsoever yearly arising therein.

The defendants said, that all and singular the proprietors, and other farmers, or occupiers of the several farms and lands which they held and occupied, had immemorially been used and



and accustomed to pay every year to the rector of the said parish, by half yearly payments on the feast of the *Annunciation of the Blessed Virgin Mary*, and *Saint Michael the Archangel*, or whenever afterwards required, a certain sum of twenty pounds, in lieu and full satisfaction and discharge of all and singular tithes whatsoever, of, in, and upon the farm and lands aforesaid growing, arising, renewing, or happening; that the said twenty pounds, paid in manner aforesaid, all and singular the rectors of the said parish for the time being, or their farmers for the whole time aforesaid, of the proprietors or occupiers thereof in full satisfaction, payment, and discharge of all and singular the tithes whatsoever, had accepted, received, and had.

EDWARDS  
against  
BURROUGHS.

The plaintiff replied; the defendants rejoined; and witnesses were examined on the part of the plaintiff only.

THE COURT ordered the defendants to account for all the tithes demanded by the bill, also for *Easter* offerings, with costs.

The defendants  
decreed to pay  
their tithes in  
kind.

TOOKIE against CORNELL.

HILARY TERM  
12. GEO. 3.

Cambridgeshire, 6th February 1772.

THE vicar of *Chippenham*, in the county of *Cambridge*, claimed all the small tithes of the parish in kind, and stated, that the defendants from *Michaelmas* 1767 had occupied therein meadow ground, pasture ground, sheep walks, fold courses, dove-houses, gardens, and orchards, from which they had had turnips, tares, coleseed, clover, rye grass, cows, calves, sheep, lambs, wool, pigs, and other titheable matters, to the tithes of which he was entitled, but which they had severally refused to pay.

The vicar of  
*Chippenham*, in  
*Cambridgeshire*, is  
entitled to the  
small tithes of  
the demesne lands  
of the manor of  
*Chippenham*, in  
kind.

The defendants admitted, that the plaintiff was, in 1748, duly presented to the vicarage, and was, as vicar, entitled to all the tithes, duties, and profits belonging to his predecessors; but insisted, that the clear sum of twenty-four pounds, and no more, had been immemorially paid by the lord of the manor of *Chippenham*, for the time being, at *Lady Day*, to the vicar for the time being, or his lessee or farmer, by way of *modus*, in lieu of all vicarial tithes whatsoever arising from the lands from time to time belonging to the lord of the manor, which had been from time immemorial demesne lands of the said manor, and also in lieu of tithes arising from the flock of sheep, which the lords of the manor, for the time being, had, from time immemorial, been entitled to feed and depasture throughout the whole year, on all or any of the waste grounds in the said manor, and from twenty-three days after the farmer of the tithe farm, then occupied by the defendant *Cornel*, had begun harvest, to *Lady Day* yearly, on all the lands within the manor

B b 4

not

TOOKIE  
against  
CORNELL.

not sown with corn or grain; that the said flock of sheep was called *the Hall flock*; that the said sum had been from time to time, until lately, accepted by such vicar; that the plaintiff had himself accepted the same for several years; and that it had been paid to him to the fifth of *April 1770*; that neither the plaintiff nor any former vicar had, at any time within the memory of man, been entitled to the tithe of any titheable matters arising from any of the lands which had been immemorially part of the *ancient demesne lands* of the manor of *Chippenham*, or to any tithe in respect of *the Hall flock*, other than the aforesaid *modus* of twenty-four pounds yearly. The defendants further said, that they had been for many years occupiers of several lands in the parish, and in proportion had a right of feeding sheep, and particularly the defendant *Cornell*, called *the Hall flock*; that the greater part of their lands, for time immemorial, had been part of *the demesne lands* of the said manor, and had constantly been the estate of the lord of the manor for the time being; that, as such, they had been and were part of the lands for which the said twenty-four pounds had been payable, although they could not at present distinguish the particulars which had been and were part of *the ancient demesne lands*; but that all the lands so occupied by them had been all that time let tithe free, except such tithes as were due to the vicar, and the tithes of such lands as were not part of *the ancient demesne lands*. They admitted, that they had in each year on their lands several titheable matters, the tithes whereof were accounted small tithes; that they had never set out the tithes in kind, because they apprehended none were due from the lands which were part of *the ancient demesne* of the said manor, or *the Hall flock*; and they said, that small sums had been paid by them for many years to the vicar after *Easter*, by way of composition for the tithes of all such lands, except the land called *the Hall flock*; and that they had from time to time offered to the plaintiff the said compositions for the tithes of all such lands, except as aforesaid, and had been willing to pay the same, but that he had refused of late to receive the same. They further said, that no security had been given to indemnify them against the plaintiff's demands, and insisted the aforesaid *modus* of twenty-four pounds to be in bar of the claim made by the bill of the tithes of the lands in their occupation, which had been, from time immemorial, part of *the demesne lands* of the said manor, and *the Hall flock*; and that they ought not to discover any particulars of any leases of their farms, or any part thereof.

The plaintiff replied; the defendants rejoined; and several witnesses were examined on the part of plaintiffs only; and no counsel appearing for the defendants;

THE

THE COURT ordered the deputy remembrancer to take an account of what was due from the defendants for all the vicarial tithes, for the time demanded by the bill, with costs, unless cause were shewn to the contrary; and on the seventh of May 1772, no cause being shewn, the said decree was made absolute.

TOOKIE  
against  
CORNELL.

POLLOCK *against* SERJEANT.

Wiltshire, 28th February 1772.

HILARY TERM  
12. GEO. 3.

THE bill stated, that in the month of April 1763, the plaintiff was duly presented to the rectory of *Gritlington*, otherwise *Grittleton*, in the county of *Wilts*, and had thereby become entitled to all tithes, both great and small arising therein; that the defendants, from the twenty-ninth of September 1769, had respectively occupied divers farms; that they had duly set out the tithes of corn, grain, and hay which had arisen thereon; but that they had depastured thereon cows, sheep, mares, and sows, from which they had had milk, wool, calves, colts, lambs, and pigs; that they had also depastured thereon divers horses, mares, geldings, colts, fillies, heifers, oxen, runts, steers, and other barren and unprofitable cattle, as well of their own as of other persons taken in to agist for hire; that they also had cut and sold divers large quantities of saleable underwood and hedgerow wood, and shrewed many trees under the growth of twenty years, from whence they had a large quantity of wood, over and above what they used in and about their farms; that they respectively had great quantities of apples, pears, plumbs, peaches, nectarines, turnips, carrots, potatoes, and other fruits, roots, and garden stuff; that they had kept a number of turkeys, geese, ducks, hens, pigeons, and other poultry, from which they had eggs and young ones; that they had respectively, during the said time, resided with their families in the parish, and had therein several persons of the age of sixteen years and upwards, from whom *Easter offerings* were due, after the rate of fourpence a-head; and that they had refused to pay to or make the plaintiff any satisfaction for the tithes in kind thereof, on a pretence that there were several *modus* payable in lieu thereof, the contrary of which the plaintiff charged to be true; and also that in a terrier of the said parish dated 1671, signed by *Nicholas Penwarne*, the then curate, and *J. Beames* and *J. Brissow*, then church-wardens of the said parish, it was expressly mentioned that the tithes were all to be paid in kind, without exception; and that in a certain other terrier of the said parish signed by *J. Tattershall*, rector, about 1700, and *W. White*, then lord of the manor of *Grittleton*, and a considerable landholder in the said parish, and owner of the lands in the possession of the said defendants, there are, after setting forth the *glebe lands*,

The rector of *Gritlington*, in *Wiltshire*, is entitled to the tithes of milch cows and calves in kind.



POLLOCK  
against  
SERJEANT.

lands, these words, "*with tithes in kind.*" The bill therefore prayed, that the defendants might account with the plaintiff, and pay him what shall appear to be due for the said tithes.

The defendants admitted, that the plaintiff was rector of the parish, and entitled to the tithes demanded by the bill, except the tithes of milch cows and calves; and they insisted, that from time immemorial there had been paid to the rector of the said parish yearly the sum of threepence for every milch cow and sixpence for every calf, in lieu of tithes in kind of all calves fallen or calved, and all milch cows kept and depastured respectively within the parish.

The defendant *Serjeant* said, that he had been an occupier for twenty years past of lands in the parish; and being a quaker, and not choosing to dispute about tithes, or to have an annual reckoning, he had compounded with the tenants of the rectory for the time being, at a sum in gross in lieu of all tithes, except the tithes of corn, which had been always yielded in kind; that the said composition was made on the footing of the said *modus*; that such composition was eleven pounds until some few years ago, when, he having taken an additional quantity of land, it was advanced to five shillings a-year more.

The defendant *May* said, that he had been an occupier of lands for eight years past, and had constantly paid to the tenants of the rectory until the year 1769, when the plaintiff took the same into his own hands, a yearly *modus* of threepence for each milch cow, and sixpence for each calf, in lieu of tithes in kind for those respective articles; that his father had occupied the same lands for thirty-one years past, and had always paid the said *modus*.

The defendant *Ghandler* said, that he and his father had rented the said parsonage and tithes for twenty years until *Michaelmas* 1769, when the plaintiff took the same and his parsonage into his own hands; that they had rented the same upon the footing of the said *modus* being authenticated and established within the parish, and had accordingly received, without variation, from the occupiers of lands within said parish the *modus* aforesaid in full satisfaction for the tithes of milch cows and calves therein, except that they had occasionally agreed with some of the occupiers for all their tithes (except the tithes of corn) in a gross composition; and that such compositions had always been made on the footing of the said *modus* being considered by both parties as established and unalterable. He admitted, that he had set out his tithes in kind in the year 1770.

The

The defendant *Serjeant* set forth the number of acres of land he occupied in that year, and an account of the several titheable matters which had arisen thereon; but he said, that he had kept no account of the milk of his cows, and that the plaintiff had never applied to him for *Easter offerings*. He admitted, that the plaintiff had applied to him in the said year for tithes in kind of milk, lambs, and wool; that he had refused to pay them in kind; that he had not in his custody any receipts given for the payment of the said *modus*es or for tithes, except in the years 1752 and 1754, given by the defendant *Chandler's* father; and that he knew not of the terriers as set forth in the bill.

POLLOCK  
against  
SERJEANT.

The other defendants answered to the same effect; and said, that they were willing to pay the plaintiff for their milch cows and calves according to the aforesaid *modus*es, and in no other way: and they set forth the value of their lambs and other titheable matters.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel for all parties; and upon reading several depositions and four receipts;

The plaintiff's counsel objected to the reading an ancient book alleged to have been a book belonging to the former rectors of the parish, and produced and offered to be read by the defendants; but after hearing the defendant's counsel, the Court over-ruled the objection.

An objection to  
evidence over-  
ruled.

And reading the folios marked 121, 73, and 75 of the said book; various other entries therein; another ancient book; an exhibit, being a terrier of the *glebe lands* and other the appurtenances belonging to the rectory of *Grittleton*, signed "*Nicholas Penwarne*, curate, *J. Beans* and *J. Briflow*, churchwardens;" and upon full debate of the matter;

THE COURT, which was full, ordered the deputy remembrancer to take an account of what was due to the plaintiff from the defendants respectively for the tithes of milk, calves, lambs, wool, pigs, poultry, and eggs, and also for the *Easter offerings* as demanded by the bill; and that they do pay to the plaintiff his costs of this suit.

#### HURD against BUXTON.

*Derbyshire*, 25th February 1772.

HILARY TERM  
12. GEO. 3.

THE rector of *Thorpe*, in the county of *Derby*, claimed the tithes of corn, grain, and hay, and all other great and small tithes whatsoever yearly arising in the parish; and stated, that of *Thorpe*, in *Derbyshire*, is, to make it into winnows, and afterwards to divide it into several equal parts, and then to set out every eleventh part, without quailing the same, in lieu of the tithe thereof.

The customary  
mode of setting  
out the tithe of  
hay in the parish  
in

Hurd  
against  
Buxton.

in the year 1768 he had compounded with the several farmers and other persons who held any meadow ground therein for the tithes of their hay, except the defendant; that in *July* 1768 he sent him notice that he would take his tithes in kind, and at the same time acquainted him, that he had appointed *J. Mellor* his tithing-man to set out and take such tithes; that the defendant afterwards, on the third, fourth, and sixth of *August* following, gave the said *J. Mellor* notice, that his hay was ready, and desired him to come and set out the tithes thereof; that in pursuance thereof he went, in order to take the said tithes; but that the defendant refused to set out the same fairly, and carried the whole crop away, pretending, that he had left one eleventh part of the hay lying abroad on the ground for the plaintiff to take for his tithe; that he had refused to take the same, in regard the said tithe was not regularly set out. The bill therefore prayed, that the defendant might account for the tithe of the hay so subtracted by him as aforesaid, or the value thereof, and be decreed to pay to the plaintiff what should appear to be due to him upon such account.

The defendant admitted, that the plaintiff was rector of the parish, and, for any thing he knew to the contrary, entitled to the tithes of hay; and said, that in the year 1768 he held about twenty-three acres of meadow ground; that the plaintiff had not compounded with him for the tithe thereof; that he had given him notice that he would take it in kind, and had appointed the said *J. Mellor* to set out the same; that as soon as he had made his grass into hay, and put the same into the staddle row or winrow, and parted and divided the same rows into several equal parts, he did, about the days in the bill mentioned, give such notice; that in pursuance thereof the said *J. Mellor* came, and might have set out the tithes if he had thought proper; and he denied that the said *J. Mellor*, when he came upon his land, had found the hay lying abroad so as to be incapable of being tithed, and acquainted him thereof; but he admitted, that *Mellor* had informed him that the plaintiff had given him orders not to tithe the same, unless it was then made into quoil; but that he found fault with the plaintiff for having given him such orders, and alledged, that the plaintiff wanted to break into the ancient and established custom of taking tithe hay within the parish; that he, the defendant, not choosing to do so in that year, thereupon set out one eleventh part of his hay for the plaintiff; and that the tithe of hay might be as well and as certainly set by out from the staddle row or winrow when the rows were so parted and divided as aforesaid as from the quoil, there being no difference between the one and the other but the trouble of making the same into quoil: and he insisted, that the ancient and accustomed way of taking tithe hay in kind within the parish of *Thorpe* had immemorially been,

first



first to make the hay into staddle or winrows, and afterwards to separate and divide the same into several parts as near as might be; and after the same was so separated and divided, to set out one eleventh part of such hay for the rector of the parish without quailing the same: and he hoped that the said custom might be established by the decree of this court.

HURN  
against  
BUXTON.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides; and reading the answer; the several depositions in the cause; and on full debate;

THE COURT ordered the bill to be dismissed with costs.

ELLIS against FERMOR.

HILARY TERM  
12. GEO. 3.

Oxfordshire, 27th January 1772.

THE vicar of *Stoke Lyne*, in the county of *Oxford*, claimed all vicarial tithes in the parish, and in particular the tithes of agistment for all sheep agisted therein, and not shorn therein, or for which no tithe wool was paid to him; the tithe of all furze cut thereon, or sold and carried away, or expended in the parish; and the tithes of all clover seed, trefoil, saintfoil, and other grass seeds raised or cut therein; and stated, that the defendant *Fermor* had, since his induction to the said vicarage on the twenty-first of *October* 1756, been seised in fee, or some other estate of inheritance, of two farms called *Tusmores*, situate in the parish of *Tusmore*, by reason whereof he and his tenants and lessees, occupiers of the said farms, had a right to depasture two hundred and forty sheep for each of those farms upon a common called *Bayard's Green*, in the parish of *Stoke Lyne*; that the defendant had himself occupied one of the said farms called *Tusmore Farm* from the said time until the fifth of *April* 1766; that he then let the same to the defendant *Roberts*, who had ever since occupied it; that the defendant *Allen* had, from the said twenty-first of *October* 1756, occupied the other farm; that they had, for great part of the time, agisted each two hundred and forty sheep on *Bayard's Green*, but had always shorn such sheep out of the parish of *Stoke Lyne*, and had not paid the plaintiff any tithes for the wool of such sheep; and the plaintiff insisted, that he was entitled to receive agistment tithe for the said sheep in proportion to the value of the pasturage thereof for the time they were respectively depastured in the parish of *Stoke Lyne*. The bill further stated, that the defendant *Fermor* had also occupied a large quantity of furze grounds within *Stoke Lyne*, and had annually cut and sold or carried away out of the said parish large quantities of furze, the tithes for which he ought to have paid to the plaintiff. The bill further stated, that the defendant *Samsom* had, during the said time, great quantities of seed,

The vicar of  
*Stoke Lyne*, in  
*Oxfordshire*,  
claims the agist-  
ment tithe of  
sheep fed and  
furze cut on  
*Bayard's Green*,  
in the said pa-  
rish.

the

ELLIS  
against  
FERMOR.

the tithes whereof were due to the plaintiff; AND PRAYED, that they might account with and satisfy the plaintiff for the same.

The defendant says, that he occupied *Tusmore Farm* and *Pimlico Farm*, both in the parish of *Tusmore*; that he had, by virtue of such occupation, a right to feed four hundred and eighty sheep from *April* to *October* on *Bayard's Green*, in the parish of *Stoke Lyne*, and also to cut furze on a furze ground which he occupied thereon;

that the sheep were only fed thereon in the day-time, and lodged at night on one or both of the farms;

that the sheep had always been sheared on the said farm in the parish of *Tusmore*, and the tithe wool paid to the vicar thereof;

that the furze he had cut on *Bayard's Green* had been used at his

The defendant *Fermor* said, that the plaintiff was vicar, and as such entitled to all vicarial tithes, except as after-mentioned; that he had, during all the time the plaintiff had been vicar, been seised in fee of two farms, the one called *Tusmore* and the other *Pimlico*, in the liberty of *Tusmore*, in the parish of *Tusmore*; that the respective occupiers of the said farms had a right to depasture each of them two hundred and forty sheep upon *Bayard's Green*; that the said right had been immemorially exercised by the occupiers thereof; that he had occupied *Tusmore Farm* from the time of the plaintiff's induction until the fifth of *April* 1766; and that from that time the defendant *Roberts* had occupied the same as tenant to him; that during the time he occupied the said farm, he had depastured yearly on *Bayard's Green* two hundred and forty sheep from the latter end of *April* to the latter end of *October*; but that none of the said sheep had ever lodged on *Bayard's Green*, or within the parish of *Stoke Lyne*, but were driven off from *Bayard's Green* every evening, and lodged and folded within some part of *Tusmore Farm*; that the defendant *Allen* had, ever since the plaintiff's induction, occupied *Pimlico Farm* as his tenant; that during the respective times that the defendants *Roberts* and *Allen* had occupied the said farms, they had respectively depastured on *Bayard's Green* yearly, from about the latter end of *April* until about the latter end of *October*, two hundred and forty sheep in respect of each of the said farms, but that none of their said sheep had lodged by night thereon, or within the parish of *Stoke Lyne*, but had every evening been lodged or folded within the said farms. He admitted, that he had shorn all such sheep depastured on *Bayard's Green* out of the parish of *Stoke Lyne*, and had shorn the same in the parish of *Tusmore*, and had never paid the plaintiff the tithe of wool or any other tithe in respect of such sheep; but he said, that he had paid to the rector of *Tusmore* the tithe of such wool, or made him a satisfaction for the same. He further said, that he did not believe that the plaintiff was entitled to agistment tithes for the pasturage of the said sheep, because that the *sheep gates* for four hundred and eighty sheep appurtenant to the said tenements had been immemorially used and enjoyed by the occupiers of *Tusmore Farm* and *Pimlico Farm* upon *Bayard's Green*; and that the tithes of wool of the said sheep had been immemorially paid to the rector of *Tusmore* as often as the said sheep had been shorn in the said parish of *Tusmore*; that it had been the constant usage to shear such sheep in the parish of *Tusmore*. He admitted also, that he occupied twenty acres of *furze lands* on *Bayard's Green*; but said, that he did not know brick kilns to burn bricks for the necessary repairs of the said farm.

whether

whether the same were in the parish of *Stoke Lyne*; that he had one year with another cut five thousand furze; but he denied, that he had sold any part of the furze; but said, that he had expended some part thereof in fuel and husbandry on the said farms, and had used the remaining part at his brick kilns to burn bricks for the necessary repairs of his estate: and he insisted, that he was not liable to pay any tithe for such furze, even if it had grown upon any land within the parish of *Stoke Lyne*, which he did not admit; and he added, that the said furze might be worth on the spot where cut about twelve shillings a hundred.

ELLIS  
against  
FERMOR

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides; and reading the answer; a deed dated the seventh of *April*, in the thirteenth year of *Queen Elizabeth*, being a grant from *T. Pigott* to *E. Love*; two receipts, dated respectively the twenty-sixth of *June* 1611 and the seventeenth of *July* 1612, being receipts for a pension, signed "*T. Potter*, rector of "*Tusmore*;" four other receipts, dated respectively the twentieth of *February* 1629, the second of *February* 1630, the second of *February* 1734, and the first of *August* 1636, signed *John Creeke*, rector; the several proofs taken in the cause; and on full consideration had by the Court;

The cause  
heard.

THE COURT, which was full, ordered the bill to be dismissed as to the tithe of sheep fed upon the common called *Bayard's Green*, in the parish of *Stoke Lyne*; and decreed the plaintiff to be entitled to the tithe of the furze demanded by the bill, but without costs on either side. The deputy remembrancer to take the account.

The bill dismissed as to the assignment tithes of the sheep; and the tithes of the furze decreed.

#### WORSLEY against AYDON.

*Yorkshire*, 29th *February* 1772.

HILARY TERM  
12. GEO. 3.

THE rector of *Stonegrave*, in the county of *York*, claimed the tithes, both great and small, yearly arising in the parish; and stated, that the parish then, and time out of mind, had consisted of the several townships, or was distinguished by the several divisions of *Stonegrave*, *West Nefse*, *East Newton cum Laystrop*, and *Nunnington*; that the plaintiff was entitled to the tithes of calves and milk in kind; that the defendants had been, for several years past, inhabitants of the township of *Stonegrave*, and had occupied messuages, tenements, and farms therein, on which they had kept, fed, and depastured a number of cows that had produced both calves and milk; that certain compositions had been taken by former rectors from the occupiers of the said farms, in lieu of the tithes of calves; and that he, the plaintiff, had agreed to accept of the like compositions from the defendants respectively in satisfaction of their tithes of calves; that

The rector of *Stonegrave*, in *Yorkshire*, is entitled to the tithes of calves and milk in kind.



WORSLEY  
against  
AYDON.

that the said compositions continued until the twenty-ninth of September 1768; that he having at that time discovered that such compositions were far short of the real value of the said tithes, then gave notice to them to determine such compositions, and thereby respectively required of them to set out and pay their tithes of calves in kind for the year ensuing the said twenty-ninth day of September 1768, or make a larger composition in lieu thereof; that he hoped that they would have thereupon severally set out their tithes of calves and milk respectively after the said twenty-ninth day of September, or would have accounted with him for the same; but that they had refused to make any discovery of the numbers of their cows and calves, the quantity of their milk, or the values thereof; and insisted, that they were not liable to pay the tithes of calves in kind, but were exempt by payment of a *modus* of one shilling a-year for each milch cow in lieu of tithe calves. The bill then charged, that if any sums of money had been theretofore paid, the same were paid as compositions only by temporary agreements, and not as a *modus* in lieu of tithes either of calves or milk; that as an evidence thereof, in the year 1685, when a survey of the said rectory was taken, it appeared by the terrier of the glebe lands of the parsonage of *Stonegrave*, and an inventory of the tithes thereto belonging, delivered in at the primary visitation of the then *Lord Archbishop of York*, and which was signed by *Thomas Comber*, then rector of the parish, and several of the inhabitants thereof; that the tithe of all meadow, pasture, and arable, and of all closes and garth in kind, that is, all corn, hay, wool, lambs, calves, agistments, together with all mortuaries, oblations, hens at *Christmas*, and *Easter* reckonings, with all manner of petty tithes whatsoever, without any *modus*, custom, or composition were due from the inhabitants of the township of *Stonegrave*; that afterwards, in the several years 1716, 1743, 1749, 1760, and 1764, the like terriers and surveys of the tithes due to the rector thereof, had been drawn up and signed by the rector for the time being and several of the inhabitants of the parish, and particularly by the occupiers of the said several messuages, farms, or tenements, at the time of such terriers and surveys taken, which had been exhibited at the several visitations held by the *Archbishop of York* for the time being, and remaining in the proper office of the said province; and that it thereby appeared (*inter alia*) that tithes of calves and all manner of petty tithes were due and payable to the rector in kind, without any *modus*, custom, or composition. The bill therefore prayed, that the defendants might be decreed to account for the tithes of the calves and milk subtracted by them respectively as since the twenty-ninth of September 1768, and pay the value of the same to the plaintiff.

The

The defendants admitted, that the plaintiff was rector of the parish, and entitled to all manner of tithes, both great and small, in kind, except the tithes of calves and milk; and insisted, that he was only entitled, in lieu thereof, to a *modus* of one shilling yearly for each milch cow fed and depastured within the said township, payable at *Michaelmas*; that he had, from the time of his induction up to the twenty-ninth of *September* 1768, regularly received such *modus* yearly at *Michaelmas*, in lieu of tithes of calves and milk arising from their respective cows; and that they had been ready and willing at all times to pay the same.

WORSLEY  
against  
AYDON.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel; and reading the answer; an order to prove the following exhibits from the consistory court of the *Archbishop of York*, viz. several terriers of *Stonegrave*, dated respectively the twenty-ninth of *December* 1685, the fourth of *June* 1716, the twentieth of *July* 1727, the sixteenth of *August* 1743, one in 1749, another *October* 1760, the twenty-fourth of *June* 1764, and the thirteenth of *August* 1770; the said terriers; several entries in two books, purporting (*inter alia*) to contain an account of the tithes of the rectory of *Stonegrave*; the deposition of *Mary Elland*; and on full debate;

THE COURT ordered the deputy remembrancer to take an account of what was due for the tithes in kind of the calves and milk demanded by the bill from the twenty-ninth day of *September* 1768, and that the defendants do pay the same to the plaintiff with costs of suit.

The deputy made his report, dated the twenty-fifth of *July* 1772, which was confirmed with subsequent costs.

### WILLS against HARRIS.

*Cornwall, 10th May 1772.*

EASTERN TERM,  
12. GEO. 3.

THE bill stated, that *R. Hale* died seised in fee simple, or otherwise entitled to some estate of inheritance, of the rectory of *Saint Kevern*, otherwise *Saint Kerian*, with its appurtenances, and all tithes, oblations, obventions, pensions, portions, fruits, profits, commodities, advantages, emoluments, and hereditaments, arising out of the towns, villages, hamlets, and fields, of the said rectory, particularly the tithes of fish thereto belonging; that being so seised, he did, by indenture dated the twentieth of *July* 1703, mortgage the same, with the appurtenances, to *E. Pol-*

The impropriator of *Saint Kevern*, in *Cornwall*, is entitled to tithe in kind of all hook fish landed in the coves of *Saint Kevern* and *Pronsfack*, excepting bait fish; to the

tenth part of the net produce of all fish, except bait fish, taken by the inhabitants of *Saint Kevern*, and sold without being landed therein; to the tenth part of the net produce of all fyne and net fish, except bait fish, landed by the inhabitants of *Saint Kevern* at *Portbaila* or *Coverack*; but not to any tithe from strangers for fish caught in the coves of *Saint Kevern*, except they land the fish at *Pronsfack*, although the fishing craft and tackle are moored within the parish.

VOL. III.

C c

lexfen,

WILLS  
against  
HARRIS.

*lexsen*, to hold for one thousand years, subject to a redemption on payment of one thousand five hundred pounds and interest ; that he died without paying off the said mortgage, and by will devised the same to *J. Balteel* and others upon the trusts therein mentioned ; that before the said mortgage was paid off, the said *E. Pollexfen* died, having made his will, and appointed *J. Pollexfen* and others trustees and executors thereof, who proved the same ; that by indenture dated the thirteenth of *May* 1713, they did bargain and sell the same, and the equity of redemption, to *J. Sandys* and others, for the remainder of the said term ; that by indenture, *J. Balteel* and others, the devisees and executors of the said *Richard Hele*, by the direction of *J. Sandys* and others, did sell to *Sir Richard Vivyan* the said rectory, in trust that he should bargain, sell, and release the inheritance in fee of the tithe fish in such manner as they should, upon request, direct and appoint ; that by indenture dated the twenty-sixth of *November* 1713, the said *J. Sandys* and others did sell to *Th. Banfield*, his executors, &c. the tithes of all fish taken and caught within, and by the inhabitants of the said parish, with the appurtenances, being parcel of the rectory impropriate of the said parish, for the remainder of the said term, and by the same did direct and appoint the said *Vivyan* to bargain, sell, and release to the said *Banfield* the inheritance in fee of all the said tithe fish, to such uses as he should direct ; that by deed dated the second of *January* 1718, the said *J. Sandys* and *T. Banfield* did bargain and sell to *W. Addis*, by way of mortgage, for seven hundred pounds, all the said tithes of fish, &c. subject to redemption ; that the said *T. Banfield* died without discharging the said mortgage, and by his will devised to his wife one-third part of his lands, &c. ; that his wife proved the will, and thereby became entitled to the tithe fish ; that by indenture dated the thirtieth of *July* 1724, the said *W. Addis* did sell the said tithe fish, with the equity of redemption thereof, to *A. Tonkyn*, his executors, &c. ; that he, by will dated the twenty-third of *June* 1742, gave his estate, &c. in which was included the said tithe fish, to his son ; but that if he should die under age, he gave to the plaintiff *Sarah Wills* one moiety thereof, and the other moiety to his two brothers ; that his son, being under age, obtained letters of administration ; that he died in 1747 under age without issue ; that upon his death, the said plaintiff *Sarah Wills* became entitled to one moiety as aforesaid ; that after she came of age, she obtained letters of administration of all the said *A. Tonkyn's* personal estate, whereby she became the personal representative of him ; that soon after the brothers sold and conveyed their moiety of the said tithe fish to the plaintiff *M. Wills* ; and that therefore the plaintiffs had become entitled to all the tithe fish that was due and payable to the impropiator of the said parish, and had, for forty years past, constantly received the same in the manner after-



WILLS  
against  
HARRIS.

after-mentioned. The bill then stated, that the rectory was a very ancient rectory; that the rectory and parish were next adjoining to THE SEA, and extended to a bay called *Husack Bay* towards the south, and *Gilling Bay* towards the north; that the parishioners and inhabitants of the said parish and others had, time out of mind, been accustomed to have and keep fishing boats, fishing nets, and other fishing craft, within the said parish and rectory, for the taking of cod, ling, hake, lobsters, herrings, pilchards, mackarel, and other great and small fish within the said bays and the seas adjoining to the said rectory and parish, and to tie and moor the said boats, or to draw the same on shore, and keep them, together with the fishing craft when not actually used in fishing, within the said parish and rectory; that for time whereof the memory of man was not to the contrary, a custom of tithing had been used and approved of therein; that every parishioner of the said parish, and all other persons being proprietors, owners, or occupiers of any fishing boat or boats, net or nets, or other fishing craft, which had been usually tied, moored, drawn on shore, or kept within any part of the said parish or rectory at the time they were not used in fishing, had paid, or by the custom ought to have paid and answered to the owners and proprietors of the said tithes, the tenth part of all the great and small fish in kind taken and caught within the said bays or other seas adjoining to the said rectory or parish, by, in, or with such boat or boats, net or nets, or other fishing craft so usually tied, moored, drawn on shore, or kept within the said parish, except only such fish as, being so taken as aforesaid, had been used for bait wherewith to take other fish, of which fish so used for bait no tithes or account was required or demanded; that the defendants the *Harris's* had for forty years past been, and were parishioners within the said parish, and had used and occupied a boat or boats, net or nets, or some other fishing craft each, for taking and catching of fish, which had been usually tied, moored, drawn on shore, and kept at *Coverack*, *Cordreva*, *Portboustack*, *Porthalla*, and *Portkerris*, being towns, villages, or places within the said parish, when the same were not actually employed in fishing; that they were also concerned in several fishing boats or vessels, seynes, and other fishing craft, as owners thereof in copartnership, and had thereby taken and caught, as well within the bays, seas, and limits aforesaid as within the seas in or near *Lizard*, *Falmouth*, &c. and other fishing places to the said seas adjoining, several quantities of pilchards, herrings, mackarel, and other sort of sea fish, the tithes or tenth part whereof ought to have been paid in kind to the plaintiffs; that there had been caught in and with such boats, seynes, nets, and crafts, of which the said defendants were so joint owners, considerable quantities of pilchards and other fish, the tithes of which ought to have been paid or

WILLS  
against  
HARRIS.

accounted for to the plaintiffs, who had applied to them for an account of such tithes, but which they had neglected to do, and had substracted and withdrawn the said tithe fish, and converted the same to their own use under various pretences. The bill therefore prayed, that the defendants S. and J. Tregellest might set forth an account of all the pilchards, mackarel, and other fish caught in the several years in the bill mentioned, or any other year, with any boats, nets, seynes, tackle, or craft, in which they, or any of them, were concerned, which were or had been moored, tied, or kept within the said parish of *Saint Kevern*; and that they might respectively account with the plaintiffs, and make them a satisfaction for the value of all such tithes of fish as had, during the time before mentioned, become due in respect of such pilchards, mackarel, and other fish, as had been caught by, with, or in any boats, nets, seynes, or other fishing craft or tackle, of which they, or any or either of them, were or was owners or owner in partnership or otherwise, within the said parish of *Saint Kevern*, or the bays or seas thereto adjoining, or with any boats, nets, seynes, fishing craft, or tackle in which they or any of them were interested, that had been usually laid, moored, or kept within the said parish of *Saint Kevern*, except only as to the tithes of such fish as had been used for bait for taking other fish as aforesaid; and that they might be compelled to pay such tithes as had become due, in respect of all such fish, except such as might be so used for bait as aforesaid, and also for the future, as the same should become due.

The defendant *Richard Harris* said, that the plaintiffs might derive their title to the tithe of fish as in the bill was mentioned; but that he did not know the same, and therefore left them to the proof thereof; that the said parish or rectory impropriate was a very ancient parish or rectory impropriate; that part thereof was situate and next adjoining to the sea, and extended in the manner as in the bill was set forth; that the parishioners and inhabitants thereof, and divers other persons residing at *Falmouth* and other places out of the said parish, had, for several years past, been accustomed to keep boats, nets, and other craft for taking pilchards at *Coverack* and other places within the said parish, used for stems, and to draw the same on shore in the said parish, when not employed in fishing; but he denied, that there was such custom in the said parish as was stated in the bill; and said, that he believed that the general custom of the said parish, as well at *Coverack* as at all other places therein, except at a place called *Porthoufack* (where tithe fish were landed and brought on shore), was, for the inhabitants of the said parish only to pay the tenth part of the amount of the real profit received for the pilchards taken within the bays and creeks adjoining to the said parish in money, after deducting all necessary expences attending the

WILLS  
against  
HARRIS.

the taking and disposing of the same; that as to the tithes of all other titheable fish, such as cod, ling, hake, and other fish taken, caught, and brought on shore within the said parish by the inhabitants only, the custom had generally been to pay the tenth thereof in kind to the owners or proprietors of such tithe fish for the time being; that as to the tithe fish of cod, ling, hake, and other fish sent to *Falmouth*, *Penryn*, and other places out of and distant from the said parish of *Saint Kevern*, the custom had been to pay only the tenth part of the money arising by sale thereof, after deducting all necessary expences; that the non-parishioners, out-owners of, and adventures in fishing boats, or other craft kept or employed within the said parish, had not ever paid any tithe, or money in lieu thereof, to the owners or impropiators of the said tithe fish therein, for any boats or fishing craft lodged or kept within the said parish, or for any fish taken or caught within the same, or wherein such non-parishioners were concerned, but had usually accounted and paid money for the said tithe fish thereof to the rector, vicar, or other person entitled thereto, in the respective towns and parishes where they resided, the same being deemed a personal tithe payable by custom only, and accordingly regulated by such customs. He further said, that he believed that the cove of *Porthoussack*, within the said parish of *Saint Kevern*, was an ancient place of fishery, and that the tithe of pilchards and other titheable fish there landed and brought on shore, and taken in the creek or cove, had been usually paid in kind by the inhabitants of the said parish only, being owners of such fish so landed and brought on shore; that the owners of fishing boats and other craft belonging to *Porthoussack* aforesaid, being inhabitants of the said parish of *Saint Kevern*, for pilchards and other fish taken there, and sent to *Falmouth* and other places out of the said parish, had always paid money in lieu of tithe of the said fish, after deducting all necessary expences. He said, that he had been an inhabitant of the said parish of *Saint Kevern* ever since his birth, being forty-two years; that during great part of the said time he had been concerned as a seynor and fisherman within the said parish; that whilst he had been so employed, and acted as a huer of the seyne boats and other fishing craft there, he had, according to the usual custom of the fishery, ordered the fisherman under him to use and occupy several stems in the said parish, but that he knew not the number of stems or boats or seynes, as it was not usual to keep any account. He further said, that he believed that the seynes, fishing boats, and crafts on which he was so employed had been usually tied and drawn on shore, and kept at *Coverack* and other places within the parish where such belonged to, when the same were not employed in fishing. He also said, that the seynes and craft on which he was so employed as aforesaid, had taken and caught as



WILLS  
against  
HARRIS.

well in the bays and creeks as in the high seas adjoining to the said parish, several quantities of pilchards and other fish, but knew not the particular quantities, not having kept any account; but that the usual custom was, for the owners or proprietors of the said seynes and fishing craft to keep such accounts, and pay the produce thereof to the said huer, seynors, and fisherman, at the end of each fishing season, according to the custom, after deducting all expences out of the produce thereof: and he spoke as to the tender of two pounds, sixteen shillings, to the plaintiff, in *February* 1763, before the filing of his bill, and which he said he had been ready since to pay, and offered to bring the same into court for the plaintiff's use; and he insisted, that the same was a full satisfaction for all tithe of fish and other demands which the plaintiff had on account of the said tithes; but that he had refused to receive the same.

The said *Richard Harris* and the other defendant *N. Harris* said, that they did not believe that the plaintiffs were entitled to tithe fish in kind of all fish taken in the said parish; but they admitted, that they had, for several years past, frequently received the tithe of such hook fish as were taken by the inhabitants thereof, and were landed and brought on shore there, whenever any person attended on their behalf to receive such tithes; but that if no person attended on their behalf to receive the same, then such fish had been sold, and the tithes thereof paid in money; but under what right they had so received the same they knew not. They also admitted, they had been, for several years past, parishioners residing within the parish of *Saint Kevern*, and had been concerned in several boats and fishing craft which had been usually tied, moored, drawn on shore, and kept at divers places within the said parish at the times when such craft were not employed in fishing. They further said, that the several parishioners of *Saint Kevern*, and other persons belonging to *Falmouth*, *Penryn*, and other places not within the said parish, had, for several years past, kept boats and fishing craft for taking pilchards and other fish at *Saint Kevern*, and had been used to tie, moor, and to draw them on shore there when not used in fishing, for keeping which boats at *Coverack* the owner thereof paid the keyage or wharfage, and also rent for the cellars and lofts where the seynes and nets were kept when not employed in fishing. They also said, that they believed that there had been different methods of tithing pilchards and other fish taken by and belonging to the inhabitants of *Saint Kevern*, in the said parish, but no constant and uniform custom; but that the same had generally been according to the custom of the cove or place where such fish had been taken and landed; but that they knew not how or when such custom was settled or altered; or whether the proprietors of seynes, not inhabitants of the said parish of

*Saint*

WILLS  
against  
HARRIS.

*Saint Kevern*, were liable to pay any tithes, or money in lieu thereof, to the plaintiffs, although the said craft had been tied and kept at *Saint Kevern* aforesaid when not employed in the fishery. But they said, that they believed the owners or impropriators of the rectory of *Saint Kevern* were well entitled to one tenth part of the money made of the fish taken by and belonging to the inhabitants of the said parish, after deducting all necessary expences. They said, that the pilchards and other fish taken at *Portboustack* by and belonging to the inhabitants of the said cove and their partners, and brought on shore there, had been usually paid in kind; but that with respect to the fish taken there, and not brought on shore, but sent to *Falmouth*, *Penryn*, and other places out of the said parish of *Saint Kevern*, the tithe thereof had been usually paid in money, deducting the necessary expences. They also said, that they were possessed of one half-part of two *stop seynes* and one *tuck seyne*, with the proper boats thereto belonging in partnership with the other defendants *S. and J. Tregellest*, both of *Falmouth*; that the said seynes and boats were usually drawn on shore and kept at *Coverack*, in the parish of *Saint Kevern*, when not employed in fishing; and that the said seynes since 1761 had taken and been entitled to, by being in partnership and consortship with other seynes, several hundred hogshheads of pilchards in the neighbouring seas and other places on the coast of *Cornwall*. They further said, that the money due from them for tithe of the said fish to 1761 inclusive had been fully paid to the plaintiff, and in 1762 duly tendered to him, but that he had refused to accept the same: and they insisted, that they were not liable to pay the tithes of pilchards in kind at *Coverack*, or any other cove or place in the said parish, except at *Portboustack*, and then only when the same were taken and landed there as before-mentioned. They also said, that they believed that the plaintiffs had no right to any tithes of such fish from the defendants the *Tregellests*, as they were not inhabitants of *Saint Kevern*, and had paid their tithes to the defendant *Walmsley*, who claimed the same as rector of *Falmouth*: and they set forth their share of the value of such fish; and said, that they were willing to pay the same as the Court should direct.

The defendants *S. and J. Tregellest*, by their answer, said, that since the year 1761 they had been concerned in partnership with the defendants the *Harris's* in two *stop seynes* and a *tuck seyne*, with the boats and proper materials thereto belonging, whereby they became entitled to their part of the pilchards taken in the neighbouring seas and other places on the coasts of *Cornwall*, and were also concerned in a *stop seyne* and *tuck seyne*, and one boat at *Corduva*. They said, that they lived at *Falmouth*, and had never paid any money in lieu of tithes for such fish, but that the defendant *Walmsley*, as rector of *Falmouth*, had claimed the same: and they set forth the value of their share of the said fish; and

WILLS  
against  
HARRIS.

submitting to the judgment of the Court, what right the plaintiffs or the said defendant had to the tithe thereof, insisted, that they were not entitled to any further account until they had established their right, when they would be ready to give such accounts as the Court should direct.

The defendant *Walmfley*, by his answer, said, that he was a stranger to the customs in the bill mentioned, and left the plaintiffs to the proof thereof. He further said, that he was, and for thirty-six years past had been, rector of the parish of *Falmouth*; that before the making of the several acts of parliament, the one intituled, "An Act for the making the Church erected at *Falmouth* a Parish Church, and no Part of the Parish of *Gluvias* or chapelry of *Saint Budock*," and which act was made in the sixteenth year of *Charles the Second*; the other act intituled, "An Act for the better Explanation of an Act made in this present Parliament, intituled, An Act for the making of the Church erected at *Falmouth* a Parish Church, and no Part of the Parish of *Gluvias* or Chapelry of *Saint Budock*," which act was made in the twenty-second and twenty-third years of *Charles the Second*, the said parish of *Falmouth* was parcel of the parish of *Budock*; that the vicars of the said parish of *Budock* for the time being were, before the making of the said acts, entitled, by custom time out of mind or otherwise, to receive the tithe of all great and small fish caught by the inhabitants of the said parish of *Budock* on the sea coasts of the said county of *Cornwall*, or the sum of twelvecence out of every twenty shillings which should be received in money for all fish and pilchards taken by the said inhabitants of the said parish of *Budock*, or for their share therein, either as proprietors of the boats, nets, and fishing craft employed in taking such fish, or when they should be concerned in taking of them in partnership with other persons living out of the said parish of *Budock*, as and for a customary composition in lieu of the said tithes; and he insisted, that, as rector of the parish of *Falmouth* by virtue of the said acts, he was entitled to all such tithes, oblations, hereditaments, mortuaries, and other parochial rights, profits, and privileges whatsoever, within the limits, bounds, and precincts of the said parish of *Falmouth*, which the vicar or curate of the said parish of *Budock* might have received or held in right of his said vicarage; that the defendants the *Tregellests* were liable to pay tithes of fish to him, or some composition in lieu thereof; that, as rector of the said parish of *Falmouth*, he was entitled to the tithes of all great and small fish caught by the parishioners, inhabitants, or persons residing within the said parish or rectory of *Falmouth*, on the high seas or sea coasts of *Cornwall*, or for their share in such fish, either as owner of fishing craft, or being concerned in partnership in taking them as aforesaid as his predecessors had; that it had been the usage ever since he had been



WILLS  
against  
HARRIS.

been rector of the said parish, and in the time of his predecessors, to pay to the said rector twelvence out of every twenty shillings which should be received in money for the pilchards taken by the said inhabitants of the parish of *Falmouth*, or for their share in such fish, which they were entitled to either as owners of the boats, nets, or fishing craft employed in taking the same as aforesaid, or in partnership, concerned in taking them with others persons living out of the said parish, and which was so paid and taken as a customary composition in lieu of such tithes, unless in some particular instance, where a special agreement had been made to the contrary, which the defendant had done by accepting a certain sum yearly in lieu of such tithes, whether such parishioner caught any pilchards or not; and that he had been constantly paid such tithe in manner aforesaid by the inhabitants of *Falmouth*, for pilchards caught on the sea coasts, as well within the limits of the parish of *Saint Kevern* as in other places, without interruption, until the plaintiff claimed the same, although the nets or other craft for taking such fish might be kept and laid up within the creeks or bays or other places within the said parish of *Saint Kevern*. He further said, that he was concerned, as owner of one eighth share of a fishing seyne kept at *Durgan Cove*, within the parish of *Constantine*; and he admitted, that he had paid tithes, or two shillings and sixpence in lieu thereof, for his share of the fish caught by the said seyne to the vicar of *Constantine*; but denied that he paid the same as a local tithe, but as an inhabitant of the parish of *Constantine*; and said, that *J. Brown* being an inhabitant of *Falmouth* had paid him, as rector thereof, his tithes, or a composition in lieu thereof, for his share of the fish caught in such seyne.

The plaintiffs replied; the defendants rejoined; and witnesses were examined on behalf of the plaintiffs and the defendants the *Harri's*; and upon hearing counsel for all parties; and reading several depositions taken in the cause; an indenture, dated the twentieth of *July* 1703; the several wills of *R. Hele* and *E. Pollexfen*; the indentures, dated the thirteenth of *May* and the twenty-sixth of *November* 1713; the deed, dated the second of *January* 1718; the will of *T. Banfield*; the indenture, dated the thirtieth of *July* 1724; the will of *A. Tonkyn*; a copy of the register of the burial of the said *A. Tonkyn* and *W. Tonkyn* his son; the letters of administration granted to the plaintiff *Sarah Wills* of the goods and chattels of *A. Tonkyn* deceased; an indenture, dated the first of *July* 1748, being the plaintiff *Matthew Wills's* purchase deed of the tithes in question; and on full debate;

THE COURT ordered a trial at law to be had upon the following issue, TO WIT, "Whether, from time whereof the memory of man is not to the contrary, a custom of tithing hath been used and approved within the rectory and parish of  
" *Saint*

WILLS  
against  
HARRIS.

“ *Saint Kevern*, otherwise *Saint Keryan*, in the county of  
“ *Cornwall*, that every parishioner of the said parish, and all  
“ other persons being proprietors, owners, or occupiers of any  
“ fishing boat or boats, net or nets, or other fishing craft,  
“ which have or hath been usually tied, moored, drawn on  
“ shore, or kept within any part of the said parish or rectory  
“ at the time when they are not used in fishing, have or hath  
“ paid, or by the said custom ought to pay and answer to the  
“ owners and proprietors of the said tithes for the time being,  
“ the tenth part of all great and small fish in kind taken and  
“ caught within the said bays or other seas adjoining to the said  
“ rectory or parish, by, in, or with such boat or boats, net or  
“ nets, or other fishing craft, so usually tied, moored, drawn on  
“ shore, or kept within the said parish as aforesaid, except only  
“ such fish as, being so taken as aforesaid, have been used for bait  
“ wherewith to take other fish ;” and in case the jury shall find  
a different mode or custom of tithing within the said rectory and  
parish, that such custom be indorsed on the *posse* : to be tried  
by a special jury ; the judge to indorse, &c. ; and the consideration of costs and other direction to be reserved until after such  
trial shall be had as aforesaid.

A trial was accordingly had, and a verdict was given for the  
defendants ; but by an order made the twenty-sixth of *April*  
1774, a new trial was granted upon the usual terms ; and  
upon such second trial the jury found specially, “ That from  
“ time whereof the memory of man was not to the con-  
“ trary, a custom of tithing of fish had not been used and ap-  
“ proved within the rectory and parish of *Saint Kevern*, that  
“ every parishioner of the said parish, and all other persons  
“ being proprietors, owners, or occupiers of any fishing boat or  
“ boats, net or nets, or other fishing craft, which had been  
“ usually tied, moored, drawn on shore, or kept within any  
“ part of the said parish or rectory at the time when they were  
“ not used in fishing, had paid, or by the said custom ought to  
“ pay and answer to the owners and proprietors of the said  
“ tithes for the time being, the tenth of all great and small fish  
“ *in kind* taken and caught within the bays or other seas adjoining  
“ to the said rectory or parish, by, in, or with such boat or  
“ boats, net or nets, or other fishing craft so usually tied,  
“ moored, drawn on shore, or kept within the said parish,  
“ except only such fish as, being so taken as aforesaid, had  
“ been used for bait wherewith to take other fish as the plain-  
“ tiff had alledged : BUT THAT, from time whereof the me-  
“ mory of man was not to the contrary, the tithe of fish had  
“ been, and of right ought to have been, and then of right  
“ ought to be paid to the owners and proprietors of the tithes of  
“ the parish of *Saint Kevern* in manner following, THAT IS  
“ TO SAY, “ That tithes in kind, during all the time aforesaid,  
“ had been, and of right ought to be paid to the owners and  
“ proprietors

WILLS  
against  
HARRIS.

“ proprietors of the said tithe of the said parish of all hook fish,  
“ except bait, landed in any cove or port of the said parish of  
“ *Saint Kevern*, and of all fish, except bait, landed at the cove  
“ or port of *Pronstack*, otherwise *Portonstock*, in the said parish;  
“ AND THAT two shillings in the pound on the net produce,  
“ after deducting the charges of carrying to market and other  
“ incidental charges in the sale, had immemorially been, and  
“ ought to be paid to the owner of the tithes of the said parish  
“ of *Saint Kevern*, as and for the tithes of all fish, except bait,  
“ taken by the inhabitants of the said parish of *Saint Kevern*,  
“ and sold without being landed in the said parish; AND THAT  
“ two shillings in the pound on the net produce, deducting the  
“ public expences, which were those of meat and drink in  
“ putting the *seyne* on board, inclosing and tucking the fish,  
“ drying and lodging the *seyne*, had immemorially been, and  
“ ought to be paid to the owners or proprietors of the tithes of  
“ the said parish of *Saint Kevern*, as and for the tithe of all  
“ *seyne* and net fish, except bait, landed by the inhabitants of  
“ *Saint Kevern* only, at *Porthalla* or *Coverack* ports or coves,  
“ within the said parish of *Saint Kevern*; AND THAT strangers  
“ or persons not inhabitants of the said parish of *Saint Kevern*,  
“ fishing in the coves or bays of *Saint Kevern*, either separately  
“ or jointly with the inhabitants of the said parish, had not paid,  
“ nor from time whereof the memory of man was not to the  
“ contrary, ought to pay any tithes, or other satisfaction in lieu  
“ thereof, to the owner of the said tithes of *Saint Kevern* in  
“ respect of fish caught with nets, except such as had been  
“ landed at the said cove called *Pronstack*, otherwise *Portbou-*  
“ *stack*, though the craft used in taking such fish had been tied,  
“ moored, drawn on shore, or kept, when unemployed, within  
“ the said parish of *Saint Kevern*.”

The cause came on to be heard on the *postea* on the twenty-second day of *July* last; when

THE COURT ordered the bill to be dismissed with costs for the defendants, unless cause were shewn to the contrary.

And such cause being shewn this day, the twentieth of *November* 1775,

THE COURT ordered the deputy remembrancer to take one or more account or accounts of what was due to the plaintiffs from the defendants respectively for the tithe of fish, according to the several and respective customs found by the jurors on the said trial, and to state the tenders: costs, and further directions to be reserved till after the report, &c.

SMYTHE, *Chief Baron*.

EYRE, *Baron*.

BURLAND, *Baron*.

HOTHAM, *Baron*.



EASTER TERM  
12. GEO. 3.

BROGRAVE *against* MACE.

Norfolk, 14th May 1772.

The mode of  
setting out the  
tithes of wheat,  
barley, and oats,  
in the parish of  
*Worstead*, in the  
county of *Nor-*  
*folk*.

THE bill stated, that the dean and chapter of the cathedral church of the *Holy and Undivided Trinity of Norwich*, founded by *Edward the Sixth*, were seized of the scite of the rectory impropriate of *Worstead*, in the county of *Norfolk*, together with all the houses, edifices, tithes, barns, yards, glebe lands, tithes, as well of corn and grain as of any other thing, commodities, profits, emoluments, and appurtenances whatsoever, to the said rectory belonging; that by indenture dated the seventh of *June* 1768, they demised, amongst other things, all that their scite of the said rectory, together with all houses, &c. to the plaintiff for twenty-one years; that by virtue thereof, he had ever since been, and still was entitled to all tithes of corn, grain, and other things belonging to the rectory; that the defendants had respectively occupied certain lands in the parish, and had grown wheat, barley, and oats thereon, which they had severally cut and carried away, without giving him notice of the time of setting out the tithes thereof; that they did not set out the tenth sheaf of the wheat before they took away the nine parts; but had set out the said tithes as follows, TO WIT, that they had carried their respective carts or waggons into the respective closes or inclosures where their wheat was so cut and severed by them, and pitched the same upon their waggons or carts before they set out one sheaf thereof as or for tithes for the plaintiff, by which method of tithing the plaintiff was prevented from comparing the sheaves by them left with the other nine parts, and had no opportunity of viewing, or forming a judgment whether he had a fair and just tenth of the said corn or not; that he had divers times requested them to set out the tenth part of the said wheat before they carried away their nine parts, but that they had refused so to do; that he had also requested them to set out their tithe of barley and oats by the tenth heap or cock, which they had also refused to do, but had set it out in different methods, that it was impossible for him to discover, whether he had his full tenth or not, as they tithed the same by the tenth swarth, and had refused to permit him to take his tithe away until they had first taken their nine parts; that they had threatened him with actions; that as there were numbers of gleaners, which they permitted to glean as soon as they had taken away their nine parts, by which means great part of his tithes had been taken away and damaged; and that they had let in their cattle also into the fields as soon as they had gleaned and taken away their nine parts, and before he could take away his tithes, to his great loss and damage. The bill therefore prayed, that the defendants might answer the premises, and that

all

all proceedings might be stayed against the plaintiff in the action brought against him by the defendant *Mace*; that he might be restrained by injunction from taking out execution on the said action, or from any further proceedings at common law against the plaintiff, until his just right and the true method of tithing were settled and determined by the Court; that proper issues might be directed for that purpose; and that the defendant *Abmill* might be restrained from commencing any suit against him for any of the matters aforesaid until his just right and method of tithing were so settled.

BROGRAVE  
against  
MACE.

The defendant *Mace* said, that he had cut and severed his wheat, and bound the same up in sheaves, and had given notice to the plaintiff of the time of setting out the tithes thereof before he set out the same, although he was not by law compellable to give such notice; that pursuant thereto he set out the same; that he had, in the year 1768, set out and severed the tenth part of his wheat by the sheaf; that the said manner of tithing wheat had been always theretofore used and practised in the parish, and had been approved of and accepted by the plaintiff during all the former years, THAT IS TO SAY, by severing and binding the wheat in sheaves, and placing those sheaves in shocks; and then when the cart or carriage was brought into the field, by pitching nine sheaves into the cart or carriage, and setting by the tenth sheaf for the plaintiff, and so until the whole close was severed and set out; that this was done both in the presence of the plaintiff and his tithing-man, many times, in the fairest and most equitable manner, beginning to pitch sometimes in one part of the shock and sometimes in another, so as to render any fraud absolutely impracticable had any been intended, as there was not; that to prevent any fraud, or even a mistake in the casting of such tithes, he had employed a man to attend during the whole wheat harvest in the year 1768 to see the tithes of his wheat fairly set out; that the said man had done so accordingly; that in 1769 he first set out and severed the tenth part of his wheat by the sheaf, and when so done set out the same from the nine parts; that in both the said years he took and carried away the same, leaving the tenth part thereof so set out for the plaintiff; and that if he did not take away the same, it was his own neglect, and arose from a disposition to harass and distress the defendant, and was not owing to the least apprehension of the full and fair tithe not being honestly set out; that in 1768 he had duly and fairly set out and severed all the tithes of his wheat, barley, and oats, which the plaintiff had accepted and taken away, except some which he had left to harass the defendant; and that the plaintiff not taking away the same, he had sued him for damages, and obtained a verdict against him; that he cut and severed by his scythe his barley and oats growing on his lands

in

BROGRAVE  
against  
MACE.

in the said years, by which method of severing they were divided into swarths; that he first set out the tithes thereof as they laid in swarths, and after setting out thereof he carried away the nine parts of the same, leaving the tenth part thereof, as and for the tithe for the plaintiff, which he might have taken away, if he pleased, immediately after they were so set out, and before the defendant took away his nine parts; and that if the plaintiff had not his full tithes of the said barley and oats, it was entirely owing to his own wilful neglect therein, or to a design of harrassing the defendant. He admitted, that in the year 1769 the plaintiff had given public notice some time before harvest, that the tithe of barley and oats should be set out by the heap or cock; but that he, the defendant, had refused to comply therewith, it not being the mode of husbandry in the parish, and in that part of *Norfolk*, as he had ever heard of, to heap or cock the barley or oats, but to cure them in the swarth; that the mode of husbandry with respect to swarth corn was the most convenient, and that it was necessary sometimes to set out the tithe of barley and oats by measurement, the ground being so unlevel that they could not set it out in swarths. He denied, that he had ever insisted on any custom in the parish for setting out the tithes of wheat otherwise than aforesaid; but he said, that he believed that there was a mode or usage therein of tithing barley and oats in the swarth when mowed, and that such mode or usage had been beyond the memory of man, TO WIT, the grower to place the sheaves together in shocks for the preservation of the same, and when the weather was likely to be bad, or towards the end of harvest, to throw them in heaps on the stubbles until they got enough to set out the tithe thereof, and then to carry the nine parts; and that in such cases it was usual for the farmer to place as many sheaves in the shock or heap as he thought proper, as it made no difference to the plaintiff, he having the tenth sheaf. He further said, that in case the Court should be of opinion that the ancient methods of tithing before set forth were contrary to law, or that such modes or customs of tithings ought to be tried by a jury, he submitted to any issues the Court should direct for that purpose, or for the future to set out his tithes of wheat, barley, and oats, in such manner as the Court should direct; but he insisted, that he ought not further to be restrained by injunction from entering up his judgment, or taking out execution thereon against the plaintiff for his damages and costs.

The defendant *Asbmill* said, that he was an occupier of land within the parish; and set forth the same; and also the modes and customs of tithing wheat, barley, and oats; and insisted, that he had duly and fully set out his tithes, &c.

The



The plaintiff replied ; the defendants rejoined ; and witnesses were examined on both sides ; and upon hearing counsel ; and on full debate of the matter ;

BROGRAVE  
against  
MACE.

THE COURT ordered the bill to be dismissed with costs.

THE COURT FULL.

NAYLOR *against* BILTON.

TRIN. TERM,  
12. GEO. 3.

Northumberland, 22d June 1772.

THE rector of *Morpeth*, in the county of *Northumberland*, claims all tithes arising therein ; AND, STATING that the defendants, in the year 1764, had severally occupied the lands called *Morpeth Low Common*, and had not paid the tithes of the oats, wheat, rye, and barley, which they had respectively reaped, PRAYED that they might account for the same, and pay what should appear due for or on account of such or any other tithes.

The rector of *Morpeth*, in *Northumberland*, is not entitled to tithes in kind on *Morpeth Low Common*, but to a *modus* of three stints in lieu thereof, *vis.* a right to depasture fifteen sheep on the said common at all times in the year.

The defendants admitted, that the plaintiff was, as rector of *Morpeth*, entitled to the tithes, both great and small, which belonged to the rectory ; but denied that he was, as rector, entitled to any tithes in kind, either great or small, arising in or upon any part of *Morpeth Low Common* ; and insisted, that a *modus* of three stints of sheep, reckoning five sheep to a stint, in and upon the said piece of ground, yearly and at all times in the year, was, and from time immemorial had been, and of right ought to be enjoyed by the rector of the said parish, in lieu of all tithes, both great and small, yearly growing within the said piece of ground, or any part thereof. They further said, that *Morpeth Low Common* was waste ground used and enjoyed by the bailiffs, free burgesses, and free brothers of the borough of *Morpeth*, as a stinted common or pasture ; that the said common being in many parts barren waste land, the bailiffs, burgesses, and free brothers of the said borough, in the year 1762, improved the same at an extraordinary expence, in order to lay the same down to grass after it should be made fit to be sown with hay seed by a due course of husbandry, and thereby to make the stints which each person was entitled to on the said common of greater value ; that they expended in improving the barren parts of the said common, from the thirteenth of *October* 1762 to the twenty-seventh of *September* 1770, nine hundred and fifty pounds and upwards ; that all the corn which grew on the said common during the said time was sold only for five hundred and seven pounds ; that the said stints were, by means of such improvements, greatly increased in value, and would be further, if the remaining barren part of the said common were improved in the same manner ; but that a total stop would be made to all such

NAYLOR  
against  
BILTON.

such improvements, if the plaintiff established a right to tithe in kind of the corn growing thereon ; that if the said *Morpeth Low Common* was not exempt from tithes in kind by virtue of the said *modus*, it was from all tithes of corn growing upon the barren parts thereof during the first seven years after the improvement thereof, by virtue of the 2. & 3. *Edw. 6. c. 13.* ; that, for time immemorial, the bailiffs, burgeses, and free brothers of *Morpeth*, had constantly employed a person, as a *herd*, to look after their cattle depasturing on the said common ; that, beyond memory, a certain part of the said common had been set apart for and enjoyed by such herd, from time to time, as a recompence for his trouble, and was called *the Herd's Close* ; that, from time immemorial, divers quantities of corn, hay, turnips, potatoes, and other titheable things, had grown on the said parcel of ground set apart for *the Herd*, and had been, from time to time, reaped and gathered by *the Herd* ; and that neither the plaintiff, nor any of his predecessors rectors of the said parish, ever pretended to claim any tithes whatsoever upon that part of the said common ; and that the said non-claim furnished evidence of the said *modus*. The defendants admitted, that they were, and for some time had been, bailiffs, free burgeses, and free brothers of *Morpeth* ; and that, from the year 1763, they had been employed in managing the said improvements ; and that, in the said year, they had severally grown on the land the different crops of oats, wheat, and rye, without setting out the tithes thereof, or giving the plaintiff notice of the same : and they set forth the value of their several crops, and of the tithes thereof.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on both sides ; and upon hearing counsel on both sides ; reading several depositions ; and on full debate of the matter ;

THE COURT, which was full, ordered the bill to be retained until *Michaelmas Term* 1773, with liberty to the plaintiff, in the mean time, to bring an action at law against the defendants, or any of them, for the tithes demanded by the bill, the defendants undertaking to admit, on the trial of such action, the several species of titheable matters by them respectively substracted, as in their answers are particularly set forth ; the consideration of costs and of all further directions to be reserved till after the said trial shall be had.

By an order made the twenty-ninth of *November* 1773, the time for the plaintiffs to bring such action was enlarged to this term ; and the action came on accordingly to be tried ; and the jury found a verdict for the defendants, " That the plaintiff had not any right to the tithes demanded by his bill."

THE

THE COURT, on the twenty-fourth of November 1774, accordingly ordered the bill to be dismissed, with costs, both at law and in equity.

NAYLOR  
against  
BILTON.

TAYLOR against BEAUMONT.

TRIN. TERM,  
12. GEO. 3.

Yorkshire, 25th June 1772.

THE bill stated, that *Ann Bowes*, widow of *W. Bowes*, deceased, being impropratrix of part of the parish of *Sandall Magna*, in the county of *York*, and entitled to all the great tithes, and also to certain small tithes, particularly to the tithes of clover and weld yearly arising within the township of *Crigglestone*, in the said parish, did, by indenture dated the fifteenth of May 1769, demise to the plaintiff, his executors, &c. all and singular such great and small tithes in the said township, for twenty-one years; that by virtue thereof he became entitled to the tithes of corn and grain yearly arising therein, and to such small tithes as aforesaid; that the defendants, during the year 1770, were and still continued occupiers of land in the said township; that they had reaped therefrom wheat, barley, pease, oats, clover, and weld; that by immemorial usage, all occupiers of land therein ought to bind the corn or grain cut by them into sheaves, and put the same into shocks or stocks, containing an equal number of sheaves, and to set out every tenth shock or stock as for tithes thereof; that if there happened a less number than ten of such shocks or stocks in any field, or any odd number of shocks or stocks, more than an even titheable number, and less than ten, that then such odd number ought to be set out by the tenth sheaf; but that the defendants had refused to set out their said tithes according to such custom; that a less quantity than a fair tenth of such corn and grain had been set out; that the same had been thrown dispersedly about the fields, and in the furrows and low and damp parts of the said fields, whereby the same was damaged and spoiled, before it could be carried away by the plaintiff; and that they had refused to discover the quantities of their titheable matters aforesaid. The bill therefore prayed, that they might account with and pay to the plaintiff what should appear to be due.

The impropratrix of the tithes of the township of *Crigglestone*, in the parish of *Sandall Magna*, in *Yorkshire*, claims the tithes of clover and weld; and insists, that the tithes of grain are to be set out by the stock, containing an equal number of sheaves, and the odd number of stocks to be set out in sheaves.

See other causes  
Trin. Term, 5.  
Car. 2. Mich.  
Term, 1. Jac. 2.  
Trin. Term, 3.  
Jac. 2. Hilary  
Term, 19. Geo.  
2. Easter Term,  
22. Geo. 2.

The defendants said they were ignorant whether *Ann Bowes* was impropratrix of part of the parish of *Sandall Magna*, and entitled to the great tithes, and also to certain small tithes; but insisted, that neither she nor the plaintiff was entitled to the tithe clover, they paying each a certain yearly sum of money, called a *modus*, to the vicar of *Sandall Magna*, in lieu of tithe hay, herbage, agistment, and clover, which was always under-

The defendants, as to the tithes of clover, say, that they pay a *modus* to the vicar of *Sandall Magna*, in lieu of tithe hay and agistment, and that clover is covered thereby;

VOL. III.

D d

stood



TAYLOR  
against  
BEAUMONT.

as to *weld*, that  
they had always  
paid the tithe at  
the rate of 5s.  
an acre;

as to grain, that  
there was no  
custom to set the  
tithes thereof  
out in stocks,  
and that they  
had fully and  
fairly set out the  
tithes in single  
sheaves, which  
was the usual  
mode of setting  
out such tithes.

The cause  
heard.

The bill dismiss-  
ed with costs, as  
to clover.  
The tithes of  
*weld* decreed at

An issue directed  
to try the cus-  
tom of setting  
out grain.

stood to be as hay; that such of them as had grown any *weld* had heretofore paid five shillings by the acre, instead of tithes in kind; and that they were still ready and willing to pay in the like manner, but that they had not been requested by the plaintiff to pay any thing for the same, since the date of the said lease. They also said, that they were ready and willing to pay small tithes to the plaintiff, in case he proved himself well and lawfully entitled to the same; and that they had paid him such small tithes as he had demanded. They admitted, that they had reaped, gathered, and severed from off their lands large quantities of wheat, barley, pease, beans, and oats, and said that before they began to reap their crops, they sent notice in writing to the plaintiff that they should begin to shear, cut, and reap on such days, as in the notice was specified, and that the tithe of such their corn would and should be duly set out and severed by them respectively from the remaining nine parts thereof in single sheaves, and thereby desired him to take care of such tithes in sheaves, and to carry them away; that the said tithes of corn were honestly, fully, and fairly set out, and by such notices tendered to the plaintiff in full, but that he had neglected to take care thereof, and had let them lie and spoil on the land to their great prejudice; that there was not, to their knowledge or belief, any immemorial usage or custom of setting out the said tithes in shocks or stocks, as in the bill was mentioned; that neither was there an immemorial custom for setting the tithe corn up with the remaining nine parts in shocks or stocks; but that on the contrary, in the year 1770, and for a number of years, several of the farmers and their shearers had set out their tithes in single sheaves, as in the present case; and that that was the ancient and legal method or custom of the setting out tithes: and they set forth the quantity of land they held in the parish, and the qualities and values of the titheable matters and things which they had growing thereon.

The plaintiff replied; the defendants rejoined; and several witnesses were examined thereon on both sides; and upon hearing counsel for all parties; and reading the depositions; and on full debate;

THE COURT dismissed the bill, as to the tithes of clover, with costs, and ordered the defendants to account for the tithes of *weld*, at the rate of five shillings an acre.

THE COURT also directed the following issue to try, "Whether by ancient and immemorial usage and custom observed and approved within the township of *Criggleston*, in the parish of *Sandall Magna*, and the titheable places thereof, all the occupiers of land there have been used and accustomed,

"tomed, and of right ought to bind all their corn or grain  
 "cut or gathered by them in any field into sheaves, and put  
 "the same into shocks or stocks, containing an equal number  
 "of sheaves, and to set out every tenth shock or stock, as or  
 "for the tithes thereof, and if it should happen in any year  
 "that there had been a less number than ten of such shocks  
 "or stocks in any field, or any odd number of shocks or  
 "stocks more than even titheable number, and less than ten,  
 "then whether the tithe of such number of shocks or stocks,  
 "less than ten, or of such odd number of shocks or stocks,  
 "had been or ought to be set out by the tenth sheaf." In case  
 the jury shall find a different custom of tithing such corn or  
 grain, such custom to be endorsed on THE POSTEA. The cause  
 to be tried by a special jury; the judge to indorse, &c. and the  
 deputy remembrancer to tax the costs, to take the account, and  
 settle the issue; and costs and further directions to be reserved.

TAYLOR  
*against*  
 BEAUMONT.

The issue was accordingly tried by a special jury, and the jury found, "That by an ancient and immemorial usage and  
 "custom observed and approved within the township of  
 "Crigglestone, and the titheable places thereof, all the occu-  
 "piers of land there have been used and accustomed, and of  
 "right ought to bind all their corn or grain cut or gathered  
 "by them in any field into sheaves, and put the same into  
 "shocks or stocks, containing an equal number of sheaves,  
 "and to set out every tenth shock or stock, as or for the tithe  
 "thereof, and if it had happened in any year that there had  
 "been a less number than ten of such shocks or stocks in any  
 "field, or any odd number of shocks or stocks, more than an  
 "even titheable number, and less than ten, then that the tithe  
 "of such number of shocks or stocks, less than ten, or of such  
 "odd number of shocks or stocks had been, and ought to be set  
 "out by the tenth sheaf, in manner and form as alledged by the  
 "plaintiff."

A verdict in fa-  
 vour of the im-  
 propriatrix.

THE COURT, on the eighteenth of November 1773, ordered  
 the defendants to account with the plaintiff for their several  
 and respective tithes of corn and grain, in manner demanded  
 by the bill, together with costs to this time, both at law and  
 in this court; the deputy to take said account, and to tax the  
 costs, &c.

The tithes of  
 grain decreed,  
 as demanded by  
 the bill.

#### GLASS *against* CALDWALL.

*Herefordshire, 23d July 1772.*

TRIN. TERM,  
 12. GEO. 3.

THE rector of *Penscomb*, in the county of *Hereford*, claimed  
 the tithes both great and small yearly arising in the said  
 parish; and stated, that the defendants, in the year 1770, re-

The rector of  
*Penscomb*, in *Here-*  
*fordshire*, claims  
 the great and  
 small tithes of

the parish for the year 1770, and says, that he gave the defendants notice on the nineteenth of *Decem-*  
*ber* 1769, that he intended to take his tithes in kind the ensuing year, and on the twentieth of *February*  
 following gave another notice to the same effect.

D d 2

spectively

GLASS  
again?  
CALDWALL.

spectively occupied lands therein, from which they had reaped, mowed, and carried away wheat, barley, oats, rye, pease, beans, hay, and clover, and on which they had kept and fed cows, ewes, and other sheep, which yielded milk, calves, lambs, and wool; that they had also agisted thereon for hire or otherwise barren and unprofitable cattle, and had divers sows which had pigs, a number of geese, ducks, hens, and other poultry, which had produced goslings, ducklings, chickens, and eggs; and also that they had cut underwood and coppice wood therefrom, the tithes of all which they had subtracted, and refused to pay, under a pretence that there was some existing composition or agreement for the same. The bill then charged that the plaintiff had never entered into any agreement with them for their tithes for the present year; but on the contrary insisted, that on or about the nineteenth day of *December* last, he had caused a notice in writing signed by him, dated the fifteenth of that month, to be delivered to each of the said defendants to the effect following, *viz.* "that the great and small tithes due to the plaintiff from the farms each of the said defendants occupied would be taken in kind the ensuing year;" that on the twentieth day of *February* last, he caused another notice, signed by him, to be delivered to each of them, that he intended, pursuant to the former notice given in *December* 1769, to gather in kind all the said defendant's tithes, both great and small, which should arise and become due to him from the farms they severally occupied in 1770; and that they still refused to comply with such notices, and would not set out their tithes or make him any satisfaction for the same, except the pretended composition. The bill therefore prayed, that they might be decreed to account for the single value of the tithes of all the titheable matters aforesaid, and pay the plaintiff what should appear due to him from them respectively.

The defendants say, that they were under composition for their tithes with the former rector; that the plaintiff had received the same for the time he had been rector; and that a notice on the nineteenth of *December* was not sufficient to determine a composition, payable only seven days afterwards.

The defendants admitted, that the plaintiff was rector, and entitled to all the tithes arising in the parish, or to some composition for the same; and that they had the titheable matters in the year 1770 as charged by the bill; but they denied, that the tithe thereof ought to have been set out to the plaintiff, according to the notice stated in the bill.

The defendant *Caldwall* said, that from the time he entered on his lands in the said parish, which was about twenty-five years ago to the month of *June* 1767, when the plaintiff was presented to the rectory, he had rented the tithes of the said lands, and all other his tithes, except poultry, chickens, and eggs, for which he paid tithes in kind, and a composition to the rector for his other tithes of nine pounds a-year, on the twenty-sixth of *December* in each year; and that he had paid the said



said composition to the plaintiff for two years, who had given him a receipt for the same.

GLASS  
against  
CALDWALL.

The defendant *Bennett* said, that he had occupied a farm for ten years past; that he had paid three pounds, ten shillings, as a composition in lieu of his tithes, except as aforesaid; that he had paid the same to the said plaintiff for the said two years, and had got his receipts for the same. He admitted, that on the nineteenth day of *December* 1769, the plaintiff had caused such written notice, signed by him, to be delivered to the defendants; and that no new agreement had been made for their tithes for 1770, otherwise than aforesaid; but he insisted, that the said agreement for a composition of their tithes still subsisted, as the notice delivered was not regular, being too short a notice before *Christmas* 1769; and therefore that the plaintiff, notwithstanding such notice, was bound to accept from them the said composition money of nine pounds, and three pounds, ten shillings, in lieu of their tithes for the said year, ending at *Christmas* 1770.

The defendants said, that accordingly on the said twentieth day of *December* 1770, they had respectively tendered to the plaintiff the said composition, which he had refused to accept; and they insisted, that they ought not to account for any of their titheable matters in 1770, or to make him in respect thereof any satisfaction other than the said composition aforesaid.

The plaintiff replied; the defendants rejoined; and witnesses were examined on the part of the defendants only; and upon hearing counsel on both sides; and reading several proofs taken in the cause, and the receipts for money in lieu of tithes signed by the plaintiff, dated the fifteenth of *December* 1769, and the twentieth of *February* following; the cause was ordered to stand over for the judgment of the Court; and the same being continued in the paper accordingly;

The cause  
heard.

The Court take  
time to consider.

THE COURT ordered the defendants to account for all and singular the titheable matters and things demanded by the bill, with costs.

The tithes de-  
creed in kind.

PARKER, *Chief Baron.*  
SMYTHE, *Baron.*  
ADAMS, *Baron.*  
PERROTT, *Baron.*

MICH. TERM,  
13. GEO. 3.

ALLIN *against* HERBERT.

*Gloucestershire, 16th December 1772.*

The dean and chapter of *Bristol Cathedral*, as impropiators of *Churchdown* and *Hucklecott*, in *Gloucestershire*, are entitled to the tithes of milk in kind arising from cows kept in the tithings of *Churchdown* and *Elbridge*.

THE plaintiff exhibited twelve separate bills of complaint in this court against the defendants; and they were, by an order of this court, dated the twenty-fifth of *January* 1771, consolidated upon the terms and conditions mentioned in the order. The bills stated, that the dean and chapter of the cathedral church of the holy and undivided trinity of *Bristol*, in the county of *Gloucester*, were on the fourth of *April* 1765, and for many years before, and ever since had been seised in fee of the rectory of *Churchdown*, otherwise *Churfdow*n, and the members of the same, together with *Hucklecott* and the members thereof, together with all the glebe lands, and all other lands, tenements, tithes, oblations, portions, pensions, and other hereditaments, profits, commodities, advantages, and pre-eminences whatsoever thereto belonging; the rents, reversions, and services thereof; and all and singular the tithes, both great and small, of every species, kind, or denomination yearly arising in the tithings of *Churchdown* and *Elbridge*, in the said parish; that being so seised, they did, by indenture of lease, dated the fourth of *April* 1765, demise the said rectory, tithes, hereditaments, and premises, with their appurtenances, to *Sir P. Boteler, Bart.* his executors, &c. for twenty-one years; that *Sir P. Boteler*, by indenture, dated the twentieth of *December* 1768, demised to the plaintiff, his executors, &c. all the tithes of corn, grain, and hay yearly growing in the tithing aforesaid, together with all other tithes both great, mixed, and small, profits, emoluments, advantages, and appurtenances whatsoever arising in the said tithings (the tithes of *Hucklecott*, in the said parish, only excepted) to hold to him, his executors, &c. for twelve years; that by virtue of the said lease, the plaintiff was entitled to all tithes, oblations, and offerings arising in the said tithings, except as aforesaid; that the defendants had, during the time the plaintiff was so entitled, severally occupied divers farms and lands in the said tithings, and had yearly therefrom wheat, barley, pease, beans, oats, and other grain, turnips, calves, lambs, pigs, and wool shorn from the sheep kept thereon; that they had depastured dry and unprofitable cattle thereon; that they had sold a number of pigeons bred thereon; that they had kept cows, from which they had milk and other titheable matters, the tithes whereof they had paid, excepting the tithes of milk, which they had refused to set out or pay, on a pretence that there was some *modus* in lieu thereof, whereas the plaintiff charged, that the tithe of milk was due of common right, and that there was no *modus* in lieu of or any exemption for the non-payment thereof. The bill therefore prayed an account of the tithe of milk they severally had from the

the cows they had kept and depastured in the tithings of Churchdown and Elbridge, since the twenty-fifth of March 1769, to the time of filing of the bill, and payment for the same.

ALLIN  
against  
HERBERT.

The defendants admitted, that the plaintiff was entitled in manner mentioned in the bill, but insisted on a *modus* in lieu of the tithe of milk in kind.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides; and reading the several proofs taken in the cause;

THE COURT ordered a trial at law to be had upon the following issue, *to wit*, "Whether there hath been, for time whereof the memory of man is not to the contrary, a *modus* or customary payment of right due and payable, and which for time immemorial hath been paid and answered to the rectors of the parish of Churchdown, in the pleadings of this cause mentioned, or to their lessees or tenants, by the occupiers of land within the said parish, who have had milch cows, a certain sum of one penny for each milch cow, in lieu of tithe in kind of milk yearly arising within the said parish, or the titheable places thereof, payable at *Lady Day* in each year." The plaintiff in equity to be plaintiff at law; to be tried by a special jury, and the judge to indorse, &c.

The issue was accordingly tried by a special jury, who found that there had not been any such *modus* or customary payment as set up and alledged by the defendants.

THE COURT, on the sixth of May 1773, ordered, that the defendants do account for and pay to the plaintiff the tithes of milk in kind, as demanded by the bills, together with costs thereof to this time; the deputy remembrancer (a) to take the said account, and to tax the costs.

SMYTHE, *Chief Baron.*

ADAMS, *Baron.*

PERROTT, *Baron.*

EYRE, *Baron.*

(a) FRANCIS INGRAM, Esq. *Deputy Remembrancer.*

#### ANDREWS against EATON.

*Essex*, 12th December 1772.

MICH. TERM,  
13. GEO 3.

THE plaintiff, as impropiator of the parish of Bulmer, in the county of *Essex*, claimed all the great tithes, and particularly the tithes of wheat, and all other corn and grain arising

The customary method of tithing wheat in the parish of Bulmer, in *Essex*.



ANDREWS  
against  
EATON,

arising therein, and stated, that the mode of tithing wheat in the said parish had been, for time immemorial, for the owners or occupiers of land there to shock the wheat reaped on their lands, and to set out every tenth shock, as the tithe thereof.

The defendant admitted, that the plaintiff had been for thirty years past seised of the impropriate rectory of *Bulmer*; and that he was entitled to all the great tithes, and particularly to the tithes of wheat arising therein; and he said, that he, the defendant, had entered on the farm which he held in the parish about sixteen years ago; that for all that time he had compounded with the plaintiff for the tithes, except during four years, in which the plaintiff had taken the tithes of corn in kind; that during the said four years, except the year 1770, he had set out the tithes of his wheat by throwing out with the fork every tenth sheaf, at the time he loaded his own nine parts, in order to carry them home; and that the plaintiff had accepted the same, as he also did from the other occupiers, until the last year. The defendant further said, that the tithe of wheat had from time to time, for a long course of years, been rendered in such a variety of ways, that he did not know what was the true mode or custom of tithing wheat in the said parish; but he denied, that the manner of tithing wheat therein had, for time immemorial, been for the owners or occupiers of lands to shock the wheat reaped on the land, and to set out every tenth shock for the tithe; and insisted, that according to the determination of this court, the tithe of wheat ought to be set out by every tenth sheaf upon the open field in such a way as it might be compared and viewed with the farmers own nine parts, and that such a quantity of corn should be tithed at a time, as the number of harvest men and other strength employed in harvesting the corn, and the circumstances of the weather would admit of, taking always care never to do any thing that should appear to be vexatious or injurious to the owner of the tithes; that he was advised always to give the plaintiff notice of his beginning the harvest; that in the year 1770 he had so done, and had set out the tithe in sheaves, and that such method of tithing his wheat in the said fields was proper; that he always had been willing to discover by what rule or method the same had been set out, if the plaintiff had applied; and he denied, that there was any such custom in the parish for the tithing of wheat, as was alledged in the bill; and he insisted, that the plaintiff was not entitled to the decree of this court for establishing the same.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel; and

and reading the answer, and likewise the several proofs in the cause; and a notice in writing signed by the defendant;

ANDREWS  
against  
EATON.

THE COURT ordered the bill to be dismissed with costs.

SMYTHE, *Chief Baron.*

ADAMS, *Baron.*

PERROTT, *Baron.*

BREE *against* CHAPLIN.

MICH. TERM.  
13. GEO. 3.

*Lincolnshire, 14th December 1772.*

THE rector of *Rysome*, otherwise *Rysohm*, in the county of *Lincoln*, claimed all tithes, oblations, offerings, obventions, and other ecclesiastical dues yearly arising therein; and stated, that the defendant, ever since the plaintiff's induction on the second of *December 1766*, had been owner and occupier of all the lands in the parish, and for two years past had growed thereupon corn, grain, and hay; that he had fed and depastured thereon milch cows, as also sheep, which produced milk, lambs, and wool; that he also had a number of calves, pigs, and colts; that he had also fed and depastured thereon barren and unprofitable cattle for hire; that he had taken in a number of sheep to be agisted; that he had turnips, part whereof he had sold; that he had cut underwood, and made part into faggots, which he sold, and also sold the remaining part; and that he had had divers other titheable matters and things, the tithes of which were due and owing to the plaintiff. The bill then stated, that by an ancient terrier exhibited the twentieth of *September 1601* by *John Herd*, clerk, then rector of the parish, and *J. Settler* and *J. Pell*, parishioners there, and deposited in the registry of the bishop of *Lincoln*, it appeared, that the glebe lands of the parsonage consisted of the particulars following: FIRST, that there was belonging to the said rectory or parsonage of *Rysome*, otherwise *Rysohm*, one close lying north and south, abutting on the north upon a common highway to a farm called *Wysoes Farm*, betwixt the church yard and the north side of the same close, upon the east upon the grounds of *Wysoe's Farms*, upon the south on the beek, and upon the west upon a close called *Kylne Garth*. SECONDLY, that there was belonging to the said rectory and parsonage of *Rysome*, otherwise *Rysohm*, another little pingle lying on the north side of a parler belonging to *Spence's Farm*, abutting upon the east on the highway through the town, upon the north on the common fields, and upon the west on two leas belonging to the said parsonage, and were sometimes the parson's to sow hemp or lyne on. THIRDLY, that there belonged to the said parsonage two lands of arable lying within the short furlong next

The rector of *Rysome*, in *Lincolnshire*, claims the tithes in kind of the whole parish, and also certain lands in the possession of the defendants, as the glebe lands belonging to the rectory.  
S. C. 7. Bro. P. C. 265.

BEE  
against  
CHAPLIN.

next *Lincoln Meare*, towards the west side of the said furlong, abutting upon a meare on the west side, upon the south on the meare, and upon the east and north on the arable lands on the same town. **FOURTHLY**, that there was not, nor were any house or houses or other grounds belonging to the same parsonage, save only the church-yard and no church. The bill then further stated, that the boundaries of the glebe lands belonging to the said parish had been so altered and varied by inclosures made by the defendant and other persons, whose estates the defendant had in the lands by him occupied at different times, that he, the plaintiff, could not ascertain the identical lands of which the said glebe lands consisted. The bill therefore prayed, that the defendant might answer the premises, and set forth the several species of tithes growing, renewing, and increasing upon the lands so by him occupied as aforesaid, and the values of such tithes, and might account with the plaintiff for the same.

The defendant says, that the parish consists of one house and six hundred and seventy-one acres of land; that he is owner and occupier of all the lands in the parish, and also of a tract of land either in or adjoining to the parish called *Grange de Lyngs*, and containing seven hundred and fifty-nine acres;

that *Grange de Lyngs*, prior to the Council of *Lateran*, was parcel of the possession of the monastery of *Barlings*, a monastery of the *Premonstratentian* order;

The defendant admitted, that the plaintiff was rector, but denied, that he was entitled to tithes in kind; and he said, that he was, and had been ever since the plaintiff had been rector, sole owner and occupier of all the lands in the parish, and also of another tract of land adjoining called *Grange de Lyngs*; that parcel of the said tract of land had been, for several years, so blended and intermixed with some of the lands lying in the parish, that he could not with absolute certainty distinguish and ascertain the one from the other; but that he believed, that all the lands in the parish, distinguishing them in the best manner he was able from the lands belonging to the *Grange de Lyngs*, consisted of the several acres and parcels of land as stated in the answer, containing six hundred and seventy-one acres; and that they lay in the said parish, and were of the yearly value of three hundred and twenty pounds; that the tract called *Grange de Lyngs* consisted of the several acres and parcels of land, also in his answer set forth, containing about seven hundred and fifty-nine acres; that the said seven hundred and fifty-nine acres were not in the parish of *Rysole*, or the titheable places thereof; and that if they or any of them were, all the lands belonging to the said tract were exempt from the payment of tithes in kind, while they were in his hands as owner thereof; for that before the Council of *Lateran*, TO WIT, in the year 1215, *Grange de Lyngs*, and all the lands thereto belonging, were parcel of the possessions of the abbey or monastery of *Barlings*, in the said county; that the said monastery was one of the greater monasteries, it being in the king's books above the value of two hundred pounds a-year; that the abbot and monks thereof were of the order of the *Premonstratenses*; that the said order was lawfully entitled to a discharge from the payment of tithes for such of their lands as they held in their

OWN



own hands; that the said monastery was not dissolved by the statute of 27. *Hen. 8.* for the dissolution of religious houses, but came to THE CROWN by the attainder of the abbot, and by forfeiture, after the making of the act of 27. *Hen. 8.* and before the making of the act 31. *Hen. 8.*; that the possessions thereof were entitled to the benefit of the said act, and the owners of the possessions of the said abbey were thereby discharged of tithes; that there was only one house in the parish (exclusive of *Grange de Lyngs*), and which was occupied by the defendant and his family; that there had not been for a great number of years in the said parish any church, chapel, or other place of public worship, the church having been demolished before the reign of *Queen Elizabeth*, and never since erected, nor any chapel or other place of public worship, in the room thereof; that neither the plaintiff, as rector of the said parish, nor any of his predecessors, rectors, thereof, from the time the said church was so demolished to the present time, ever performed any religious duty in the said parish, except what was necessary to be read and performed upon their inductions; for that he the defendant, and the several persons who had owned the lands in the said parish before him, and their families, for a great series of years, had resorted to divine service to the parish church of *Burton*, adjoining to the parish of *Rysome*, or to some other neighbouring parish; that the minister of such parish, for the time being, officiated for them in burials, christenings, and in the holy sacrament, and other sacred functions; that he received, as he believed, his customary dues and fees as minister of such church and parish; and that the rectors of *Rysome* had not, within the memory of man living, and from the time aforesaid as he believed, been charged with or performed any duty in the said parish; that there never was, he believed, a parsonage house or any glebe land in *Rysome* belonging to the rector thereof; that there was a terrier of the parish in the registry of the bishop of *Lincoln* of some such purport as stated in the bill, but that that such terrier or certificate was no evidence against him, as it did not appear to be founded on just and proper grounds, and might be an *ex parte* instrument, calculated to give the rector a right to which he had no just title; that he knew not the particulars of such glebe land, if any such ever was, or the boundaries or descriptions thereof; and that if any glebe land had ever belonged to the rectory it was included in *the composition real* after mentioned. He then denied, that he, or any under whom he claimed, had wilfully confounded and blended, by inclosures or otherwise, any pretended glebe lands in *Rysome*, with any other lands belonging to him. He further said, that he and his father, and such other persons as had been owners of the estate in *Rysome* under whom he claimed, had, from time immemorial, been lawful owners and in possession of all the lands in the said parish, and he insisted on the benefit of the statute

BARE  
against  
CHAPLIN.

that between the  
passing of the  
27. *Hen. 8. c.*  
28. and the 31.  
*Hen. 8. c. 13.*  
it came to the  
crown by the at-  
tainder of the  
abbot;

that the owners  
of the said *grange*  
having always  
occupied it, the  
same is discharg-  
ed while in their  
manuance from  
the payment of  
tithes;

that the terrier  
respecting the  
glebe land was  
not authentic.

of

Bill  
against  
CHAPEIN.

that there is a  
*composition real* of  
15l. a-year pay-  
able to the rec-  
tor in lieu of the  
tithes of the pa-  
rish; and 10s.  
1d. a-year to  
the archdeacon  
of *Stowe*, in lieu  
of synodals,

of limitations made in the thirty-second year of *Henry the Eighth*, and of all other the statutes for restraining suits for the recovery of lands after long possession in bar of the plaintiff's claim; and also that he had had possession of all the lands in the parish, either by himself or by those under whom he claimed for so long a time, as to bar the plaintiff from setting up any claim at this time to such glebe lands, if such there were; that the plaintiff's remedy, if he had any, was at law, and not in equity. The defendant then set forth the titheable matters he had on his said lands, as in the bill charged, and the values thereof; but insisted, that the plaintiff was not entitled to receive *in kind* any tithes for any of the things, or any oblations, obventions, offerings, or other ecclesiastical dues or payments, except as follows. He then stated, that an ancient, lawful, and valid *composition real* had been made before the reign of *Queen Elizabeth*, by and between the parson, patron, and ordinary of the said parish, by virtue whereof certain ancient payments of fifteen pounds, ten shillings, and three halfpence, in money, was made payable half yearly at *Lady Day* and *Michaelmas* in each year; namely fifteen pounds to the rector of the parish, and ten shillings and three halfpence, the residue thereof, to the archdeacon of *Stowe*, within the diocese of the bishop of *Lincoln*, for procurations and synodals; that the said *composition real* had been paid from ancient time before the reign of *Queen Elizabeth*, to wit, from the time of making such *real composition* by the owner of the lands in the said parish (except *Grange de Lyngs* aforesaid), in lieu and full satisfaction of all tithes whatsoever, offerings, oblations, obventions, and other ecclesiastical dues, possessions, and rights whatsoever yearly arising, renewing, increasing, or payable upon or from all the lands therein, or the titheable places thereof or belonging to the said rectory; that the said ancient payment of fifteen pounds had been constantly and regularly paid for a long series of years down to *Michaelmas* 1766 to the plaintiff's predecessors, rectors thereof, or to some persons for their use, and by them to the said rectors, together with the said ten shillings and three halfpence as aforesaid; and he insisted, that by virtue of such *composition real*, he, and those under whom he claimed from the time of making thereof, had not been accountable to the rector for the tithes in kind of their lands in the said parish; and that he had since 1766 paid the said ten shillings and three halfpence for procurations and synodals in the usual manner. He further said, that it appeared from a certificate in the fourth and fifth years of the reign of *Queen Anne*, returned into the first fruits office to entitle the rectory of *Rysome* to her majesty's augmentation and bounty, that the following entries were made therein: "*Rysome Rectory*, the yearly value fifteen pounds, presentative but no church, but one family;" and that the said rectory was or shortly would

be entitled to her majesty's augmentation or bounty; that for the reasons aforesaid, he had refused to pay the plaintiff the tithes in kind; but that he was ready to pay the arrears of the said fifteen pounds *per annum*, and to continue such payment as the same should grow due; that he had always been ready to pay the same, but that the plaintiff had refused to accept of it. He further said, that the lands called *Grange de Lyngs* were not within *Rysome*, but that if they or any part thereof were, they were parcel of the possessions of the said monastery, as appears from the certificates or returns made in the first fruits office, in the twenty-seventh year of *Henry the Eighth*, pursuant to a clause in an act of parliament, passed in the twenty-sixth of his reign, intitled, "the Bill for the First Fruits, with "the yearly Pensions to the King," and also from certain accounts called "the Minister's Accounts, returned into the "Augmentation Office, in the twenty-ninth year of the reign "of the same king, concerning the lands, revenues, and possessions of the said monasteries." He further said, that he did not claim an exemption from the payment of tithes for any lands in *Rysome*, except *Grange de Lyngs*; but that he claimed to pay an annual sum, in lieu of tithes arising from all the lands in the said parish, with such provisional exception in regard to *Grange de Lyngs*; and that he knew not, that from time immemorial, there had been any *modus* or customary payment, other than the before-mentioned one, yearly payable by all the occupiers of lands within *Rysome*, to the rector of the parish, in lieu of all tithes yearly arising from all the lands by him occupied therein; that with respect to the payment of fifteen pounds, ten shillings, and three halfpence, *per annum*, he believed the same to be an ancient payment, for the origin whereof he could not account; that it had been invariably paid to the rector, in lieu of tithes, from the time his father purchased the said lands in the year 1721, to the time before-mentioned; and that he had great reason to believe, that when he purchased the estate, the said annual payment was then considered to be an effectual bar against the payment of tithes in kind to the rector of the parish.

Bare  
against  
CHAPLIN.

that the said  
15l. 10s. 1½d.  
had been constantly paid to  
plaintiff's predecessors.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and now upon hearing counsel for both parties; and on reading the following evidence for the defendant; a record from the first fruits office, being a certificate from the bishop of *Lincoln*, viz. "*Rysome Rectory*, fifteen pounds yearly value, presentative, but has "no church, and but one family;" several exhibits; the first and second answers; and several depositions of witnesses;

The cause  
heard.

THE COURT ordered a trial at law, upon the two following issues:

FIRST,



BREE  
against  
CHAPLIN.

FIRST, "Whether the lands called *Grange de Lyngs*, in the pleadings in this cause mentioned, be in the parish of *Rysome*, otherwise *Rysolme*."

Issues directed to try whether *Grange de Lyngs* is in *Rysome*;

and whether there was a composition real of 15l. 10s. 1½d. a-year, in lieu of the tithes of the parish.

SECONDLY, "Whether some ancient, lawful, and valid composition real was made before the reign of *Queen Elizabeth* by and between the parson, patron, and ordinary of the parish of *Rysome*, otherwise *Rysolm*, by virtue whereof certain ancient payments of fifteen pounds, ten shillings, and three halfpence, to wit, fifteen pounds in money was made payable half yearly at *Lady Day* and *Michaelmas*, in each year to the rector of the said parish, for the time being, and ten shillings and three halfpence, residue of the said fifteen pounds, ten shillings, and three halfpence, was to be paid to the archdeacon of *Stowe*, within the diocese of the bishop of *Lincoln*, for procurations and synodals yearly, and which have been paid from ancient time before the reign of *Queen Elizabeth*, TO WIT, from the time of making such real composition, by the owner for the time being, of all the lands within the said parish, except *Grange de Lyngs* aforesaid, in lieu and full satisfaction of all tithes whatsoever, offerings, oblations, obventions, and other ecclesiastical dues, possessions, and rights whatsoever yearly arising, renewing, increasing, or payable upon or from all the lands within the said parish, or the titheable places thereof, or belonging to the said ancient rectory; and whether the said ancient payment of fifteen pounds hath been constantly and regularly paid for a long series of years down to *Michaelmas* in the year of Our Lord 1766 to the plaintiff's predecessors, rectors of the said parish for the time being, or to some persons for their use, and by them, the said rectors, together with the payment of the said ten shillings and three halfpence, in manner aforesaid, received, taken, and accepted during the time aforesaid, in full satisfaction, in lieu of all tithes whatsoever, offerings, obventions, oblations, and other ecclesiastical dues, possessions, and rights yearly arising, renewing, or payable within the said parish of *Rysome*, otherwise *Rysolm*, exclusive of *Grange de Lyngs* aforesaid, and the titheable places thereof belonging to the said rectory." The plaintiff in equity to be plaintiff at law; to be tried by a special jury; and further directions and costs to be reserved until after the trial.

Verdict for the defendant on both issues.

The issues were accordingly tried on the twenty-fourth of *March* 1774, when the jury on both the issues found a verdict for the defendant.

A new trial granted.

The plaintiff, on the twentieth of *April* 1774, moved for a new trial, and upon hearing counsel several days it was adjourned

journed over for the opinion of the court on the sixteenth of May 1774, when a new trial was ordered to be had of the said issues by a special jury, on the plaintiff paying to the defendant the costs of the former trial, to be taxed.

BATE  
against  
CHAPLIN.

The defendant appealed to THE HOUSE OF LORDS against the above order for a new trial; and on the third of May 1775, on hearing the said appeal, the said order was reversed.

The order for new trial reversed in the house of lords.

On the tenth of November 1775, the bill was accordingly dismissed, but, by consent, without costs.

The bill dismissed.

GARRARD against SCHOLLAR.

MICH. TERM,  
13. GEO. 3.

Wiltshire, 15th December 1772.

THE vicar of Ramsbury, in the county of Wilts, claimed all manner of tithes yearly arising in the parish; and stated, that the defendant, for thirty years past, had occupied therein divers tenements and lands which he had sowed with clover and turnips, and had therefrom clover seed and turnip seed, which he had sold and disposed of; that he also held a messuage and malt mill, in which he had ground malt, but that he had not paid the tithes of the mill, or of the clover seed or turnip seed during the said time, although he had had each of the said titheable articles in every year.

The vicar of Ramsbury, in Wiltshire, claims the tithes of clover seed, turnip seed, and the mulcture of a malt mill.

The defendant said, that the plaintiff had been vicar of the parish for thirty years past; that he was entitled to all the tithes that his predecessors had enjoyed; that some years ago he, the defendant, had purchased the fee simple of a small garden, orchard, and close of land in the parish; that he also occupied another cottage and close of land therein; that he had sowed clover and turnips thereon; that in the cottage there was a hand mill erected for grinding malt; that it was worked by the hands and labour of man; and that it was an ancient mill: and he contended, that no tithes were due, or had ever been paid in the parish, either for the clover seed, the turnip seed, or the mulcture of the hand mill.

The defendant says, that no tithes are payable for clover seed or turnip seed; that the mill was only a hand mill; and that it had been erected time out of mind.

THE COURT ordered the bill, so far as it sought an account of tithes above six years next before the filing thereof to be, and so far as it sought an account of the tithes of garden stuff and the hand mill to be dismissed with costs; and that an account be taken of what was due for the tithes of clover seed and turnip seed arising on the close in the answer mentioned to have been in the defendant's possession from the beginning of six years next before the filing of the bill.

The bill dismissed as to all tithes beyond six years and as to the hand mill during the six years; and the tithes of the seeds decreed.

MICH. TERM;  
13. GEO. 3.

MADDOCK *against* DAY.

Huntingdonshire, 16th December 1772.

The rector of *Great Catworth*, in *Huntingdonshire*, claims the great and small tithes arising in the hamlet of *Little Catworth* in kind; and states,

that on the 7th of May 1764, the defendant signed an agreement to pay him 9l 13s. a-year in lieu of tithes; but that on the 2d of May 1768, he, the plaintiff, had given the defendant notice, that he would take his tithes in kind from the 7th of May following.

The defendant says, that he occupies a farm in the hamlet of *Little Catworth*; that part of it lies in the parish of *Great Catworth*, and part in the adjoining parish of *Stow cum Catworth*; and that there is a *modus* of 9l. a-year in lieu of the tithes;

that the prebendary of *Long Stow* is entitled to

THE rector of *Great Catworth*, in the county of *Huntingdon*, claimed the great and small tithes, the *Easter offerings*, oblations, obventions, dues, and profits, yearly arising therein; and stated, that the defendant *Day*, ever since the first of May 1768, had occupied therein a farm, on which he had growing wheat, rye, barley, pease, oats, tares, vetches, and other grain, and had fed, as well of his own as of other persons, by way of agistment, horses, oxen, cows, sheep, and other cattle, which had yielded milk, calves, lambs, and wool, and also had depastured dry and unprofitable cattle, and had had several other titheable matters, the tithes of which were due in kind, but which he had taken and carried away without setting out the tithes thereof, except for beans, pease, oats, and spring corn, and had refused to make him any satisfaction for the same. The bill then charged, that on the seventh of May 1764, the defendant had signed an agreement to pay the plaintiff nine pounds thirteen shillings yearly as a composition for his tithe; that on the second of May 1768, the plaintiff had given him notice to pay his tithes in kind from the seventh of May following. The bill further stated, that the defendant insisted that his farms were in *Little Catworth*, in the rectory of *Stow Longa*, and belonged not to the plaintiff; but he, the plaintiff, insisted, that the bounds of *Little Catworth* ran into, and were partly in the parish of *Great Catworth*, and partly in the parish of *Stow cum Catworth*; and that the lands occupied by the defendant lay in that part of the township of *Little Catworth* which was in the parish of *Great Catworth*. The bill therefore prayed a discovery, account, and payment.

The defendant *Day* admitted, that on the seventh of May 1768 he occupied a farm in the hamlet of *Little Catworth*; that some part of the lands were in *Great Catworth*, and other part in *Stow cum Catworth*; that all the time he had occupied the said farm, he had paid the plaintiff or his predecessors nine pounds yearly, as a *modus* in lieu of tithes in kind; that the same had been paid by the former tenants thereof; and he stated, that the prebendary of the prebend of *Long Stow*, otherwise *Stow Longa*, founded in the cathedral church of *Lincoln*, had, in right of the said prebend or his lessee, had, ever since the foundation thereof, received the tithes of corn, grain, hay, wood, and other great and predial tithes, and all small tithes, duties, offerings, oblations, obventions, dues, and profits, arising from all the lands in the parish of *Stow Longa cum Catworth* aforesaid, and from all the copyhold messuages, lands, meadows, pastures, and of all copyhold lands in the manor of *Spaldwick*; grounds,



grounds, and other common lands and grounds in the manor of *Spaldwick*, with *the Soak*, in the said county, of which the hamlet of *Little Catworth* was parcel: that the same belonged to the defendant *Cocks*, clerk, prebendary of the said prebend, or to the defendant *Read*, as lessee thereof; that he, the defendant, as undertenant to the said lessee for twenty-four years past, had received all tithes, both great and small, duties, offerings, oblations, dues, and profits, whatsoever, arising in the hamlet of *Little Catworth*, without any claim by the plaintiff, or any of the former rectors of *Great Catworth*, except a yearly payment of one pound, fifteen shillings, which had, time out of mind, been paid by the prebendary, his lessee or undertenant, to the rector of *Great Catworth*, as a *modus* in lieu of the tithes of all those freehold lands and premises in *Great Catworth* which run into the fields or bounds of *Little Catworth*; that such payment had been continued by the defendant for twenty-four years to the former rectors of *Great Catworth* and to the plaintiff; that all the messuages, lands, tenements, and grounds, in *Little Catworth* had been deemed and reputed to be copyhold, and parcel of the manor of *Spaldwick*, with *the Soak*; had paid quit rents to the lord of the said manor; and, in the perambulation of the bounds of *Little Catworth*, were all deemed parcel of the same, except one messuage and some lands lying in the bounds of *Little Catworth*, which were reputed to lie within the parish of *Great Catworth*; but that he did not know where such lands did lie, or the boundaries thereof; that in the year 1768, as tenant as aforesaid, he took the wheat, barley, and other grain, hay, and wool, which was set out for the tithes of *Robert Butler* and other people arising upon the lands occupied by them, or from their sheep depastured and shorn in *Little Catworth*, or the titheable places of the said prebend; but that such tithes were not set out for the plaintiff, nor was the said land occupied by the said persons, or any part thereof, in *Great Catworth*, or the titheable places thereof; that he had received the tithes of the said lands for twenty-four years without interruption; that in the harvest of the year 1768, he had taken and carried away the tithes of the beans which grew upon some land in *Little Catworth*, without making the plaintiff any satisfaction for the same; and that the tithes thereof, for all the time he had been tenant of the said prebend estate, had been held by him, as well as by the former tenants of the said estate without any interruption of the plaintiff or his predecessors; and he denied, that he had in *Great Catworth* any titheable matters, the tithes whereof ought to be paid to the plaintiff; and said, that he had always been ready to pay him the said two annual sums of nine pounds, and one pound, fifteen shillings, as aforesaid; and that he hoped he should not be compelled to account for the said tithes. He admitted, that the plaintiff was rector of *Great Catworth*; that, as such, he was entitled to all tithes

MADDICK

against

DAY.

that the hamlet of *Little Catworth* is parcel of the said manor; that he, the defendant, was under-lessee of the said tithes; that there is a *modus* of 1l. 15s. payable thereout to the rector of *Great Catworth*, in lieu of the tithes of such freehold lands of *Great Catworth* as run within the limits of the hamlet; that all the lands of *Little Catworth* are copyhold, and parcel of the manor of *Spaldwick*, except one messuage; that in the year 1768, he, as lessee of the said tithes, received them of the inhabitants of *Little Catworth*;

and that he had so done without any interruption or claim from the plaintiff or his predecessors for a course of twenty-four years that he had no titheable matters in *Great Catworth*; that he had always been ready to pay the *modus* of 9l. and 1l. 15s.;

MADDOCK  
against  
DAY.

that it appeared  
by the meerholds  
that his farm  
was in the pa-  
rish of *Stow  
Longa*, and not  
in *Great Cat-  
worth*;

that he also held  
lands in the com-  
mon fields of  
*Little Catworth*,  
and had a right  
of common there-  
in;

that he could  
not distinguish  
in which of the  
parishes some of  
the lands lay;

that he knew of  
no other pay-  
ments in lieu of  
the tithes of the  
lands lying in  
*Great Catworth*  
than those before  
mentioned.

arising therein, as his predecessors had been; that he, the defendant, occupied the farm and lands as stated in the bill; that *Little Catworth* lay within, and was part of *Stow Longa cum Little Catworth*; that they were adjoining parishes; and that there were certain ancient meerholds or boundary marks to ascertain the bounds and limits of the said parish of *Stow Longa*, adjoining to the said parish of *Great Catworth*; whereby it appeared, that the several farms and lands lying in *Little Catworth*, and particularly the farm and lands rented by him, were within the boundaries of *Stow Longa*, and not on that side of the said meerholds which was in the parish of *Great Catworth*. He further said, that the farm occupied by him consisted of the several closes in his answer mentioned, and also of several acres of land lying dispersedly in the common fields of *Little Catworth*, and within the hamlet of *Little Catworth*; that there was a large common belonging to the hamlet of *Little Catworth* which was stocked with cattle belonging to him and the other occupiers of farms and cottages in the town and hamlet of *Little Catworth*, and no others; that for the said right of common they yearly paid a certain fine or rent to the *Duke of Manchester*, as lord of the manor of *Spaldwick*, with the *Soak*, within which manor the said common did lie; and that it was within the parish of *Stow Longa*. He admitted, that he had paid the plaintiff, as rector, the said nine pounds yearly, as he was occupier of the lands there, and one pound, fifteen shillings, yearly, as undertenant to the lessee of the prebendary of *Stow*, for which he took receipts; that being doubtful in which parish the said lands laid, the plaintiff was not entitled to the tithes in kind from any of the lands in his occupation, or any other lands lying in *Little Catworth*, as he was unable to distinguish the same; that his cattle had fed and depastured in the open fields and commons of *Little Catworth*; and that therefore he could not set forth their numbers, their species, or the values of their tithes; but he set forth an account of the several titheable matters and things arising from the lands in his own occupation, with the values thereof. He said, that he believed that all the great and small tithes in kind arising within the parish of *Great Catworth*, or the titheable places thereof, or some *modus* or composition in lieu of tithes, was payable to the rector of *Great Catworth*, but knew not what *modus* it was, or in what manner it was payable, or at what time in the year the tithes of such parish were payable, except as to the aforesaid two payments; that they were not properly *modus*es or compositions for tithes, but portions of tithes payable to the rector of *Great Catworth* out of lands in the parish of *Stow Longa*, and except that he believed the tithes of corn and grain were payable at severance, and the tithes of lambs on *Saint Mark's Day*, wool at the *Shear Day*, apples and fruit when gathered, according to the custom of the parish of *Great Catworth* and its neighbourhood; but that he never heard that any

any tithes of garden stuff had ever been taken within the said parish of *Great Catworth* or *Stow Longa*. He further said, that on the first of *May* 1768 the plaintiff gave him notice to pay his tithes in kind; but he denied that any tithes were due from him to the plaintiff. He said, that no part of the parish of *Great Catworth*, or the titheable places thereof, did extend or lie within the bounds of *Little Catworth*; and he submitted to the judgment of the court respecting the aforesaid two payments of nine pounds, and one pound, fifteen shillings.

MADDOCK  
against  
DAY.

The defendant *Cocks*, by his answer, said, that, for ought he knew to the contrary, the plaintiff might be rector, as stated in the bill, and entitled to tithes in the manner set forth. He admitted, that he was prebendary of *Stow Longa*; and said, that he believed, that the impropriate rectory of *Stow Longa* belonged to the said prebend; but that he did not insist, that the tithes of *Little Catworth* belonged to him in right of the said prebend, nor did he set up any claim to the tithes in the bill mentioned demanded by the plaintiff, he being an entire stranger to the several matters in the bill mentioned relating thereto.

The defendant *Read* said, that by indenture of lease dated the first of *September* 1761, and made between the prebendary of the prebend of *Stow Longa*, founded in the cathedral church of the *Blessed Virgin Mary of Lincoln*, and this defendant, the said prebendary did demise to him, his heirs, &c. all that the rectory or parsonage and prebend of *Stow Longa*, with its appurtenances, &c. to hold to him, &c. for three lives, at twenty pounds *per annum*; and he insisted, that by virtue of the said lease he became entitled to receive all tithes, oblations, obventions, and other ecclesiastical dues, duties, and payments, yearly arising within the said parish of *Stow Longa* and the titheable places thereof, and particularly within the hamlet of *Little Catworth*, or at least such part of the said hamlet as was within the parish of *Stow Longa*, and to all *modus*es, compositions, and customary payments, payable in lieu of such tithes; the said prebendary having been, at the time of granting the said lease, seised in fee of the rectory impropriate of the said parish of *Stow Longa*, and of all tithes, oblations, obventions, and other ecclesiastical dues and duties, and all *modus*es, compositions, and prescriptive payments arising within the said parish and titheable places thereof. He also said, that *E. Harley* did, in *July* 1760, demise all the said tithes and other ecclesiastical dues and duties, *modus*es, and compositions arising within the said parish of *Stow Longa* to the defendant *Day*. He said, that he believed that the plaintiff was rector of *Great Catworth*, and as such entitled to the tithes thereof in the manner as his predecessors rectors had enjoyed the same; and that the most considerable part of the lands occupied by the defendant *Day*, and most of the other farms within *Little Catworth*, were in the

that the tithes  
of *Stow Longa*  
were demised to  
*Day*;



MADDOCK  
against  
DAY.

that the preben-  
dary was enti-  
tled to the tithes  
of the manor of  
Spaldwick ;

that the inhabi-  
tants of *Little*  
*Catworth*, except  
the defendant  
*Day*, had re-  
sorted to the  
church of *Stow*  
*Longa*.

parish of *Stow Longa*, and not in *Great Catworth* ; that the prebendary for the time being, or his lessee, had, for time immemorial down to 1768, received all the tithes of corn, grain, hay, wood, and other predial tithes, and all small tithes, dues, duties, offerings, oblations, obventions, ecclesiastical dues and profits whatsoever, arising from all lands within the manor of *Spaldwick*, with *the Soak*, within *Little Catworth*, as lying within the parish of *Stow Longa* ; but he said, that he believed the defendant *Day* and the former occupiers of the farms rented by him, paid some annual sum to the rector of *Great Catworth*, by way of *modus* or otherwise, in lieu of the tithes of such part of the said farms and lands occupied by him as were computed to lie within *Great Catworth* ; that the occupiers of several farms and houses within *Little Catworth* (except the defendant *Day* and the former occupiers of the farms rented by him, and also the occupiers of a house in the said hamlet rented to *R. Butler*) had, for time immemorial, resorted to the parish church of *Stow Longa* to hear divine service and receive the sacrament, and had married, baptized, and were buried there, and had been rated to the land tax and church and other rates within the said parish of *Stow Longa*, and had served offices there ; that the occupiers of the farm and lands rented by the defendant *Day* had, for time immemorial, paid rates for some considerable part of the said farm and lands to *Stow Longa* ; that the churchwardens and parishioners of *Stow Longa* had, in their several perambulations of the bounds of the said parish, perambulated and taken in the whole of the said hamlet of *Little Catworth* ; and that the rectors of *Great Catworth* had never, till 1768, taken or demanded tithes in kind for any lands in *Little Catworth* ; and he insisted, that, as lessee to the said prebendary, he was entitled to all tithes and other ecclesiastical dues arising within *Little Catworth*, and particularly upon the lands of *Robert Butler* and others, and such parts of the said farms occupied by the defendant *Day* as lay within *Stow Longa* or the titheable places thereof.

The cause  
heard.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined as well on behalf of the plaintiff as on the part of the defendant *Day* ; and upon hearing counsel for all parties ; and reading the several proofs taken in the cause ;

An issue direct-  
ed to try, whe-  
ther the defend-  
ant's lands are  
in *Great Cat-*  
*worth*.

THE COURT ordered a trial at law upon the following issue,  
“ Whether the said lands in the occupation of the defendant  
“ *Day*, in the hamlet of *Little Catworth*, do lie within the parish  
“ of *Great Catworth*, or not ? ” the jury, if they do not find the  
whole of the said lands, but only part thereof, to be in the said  
parish of *Great Catworth*, to indorse such part on the *posse* ; the  
cause to be tried by a special jury ; a view to be had ; and the  
consideration of costs and all further directions to be reserved  
till after trial.

The

The parties, to save the great expence of trying the said issue, came to the following agreement in writing, viz. "IN THE  
 " EXCHEQUER. *M. Maddock*, clerk, plaintiff, and *T. Day*, Sir  
 " *John Read*, Bart. and another, defendants. IT IS AGREED  
 " between the parties in this cause, that in order to save the  
 " expence of the trial at law upon an issue in a feigned action  
 " directed by this court to be tried at the next assizes to be holden  
 " in and for the county of *Huntingdon* between the plaintiff and  
 " the defendant *Day*, that the defendant *Day* shall submit to  
 " account for all the great and small tithes of such part of his  
 " farm in question in this cause which lies and is in that part of  
 " the hamlet of *Little Catworth*, and proved by the depositions  
 " taken on the part of the plaintiff in this cause, in the same  
 " manner as if the plaintiff had obtained a verdict for the same  
 " on the trial of the said issue; and that the defendant Sir *John*  
 " *Read* shall disclaim all right to tithes within the same peram-  
 " bulation, but without prejudice to the plaintiff; and that this  
 " cause be set down for hearing, and a decree made for the  
 " same accordingly."

MANDOCK  
 against  
 DAY.

The defendant  
 submits to ac-  
 count for such of  
 his lands as lie  
 in that part of  
 the hamlet which  
 is in *Great*  
*Catworth*.

This cause came on accordingly on the sixteenth of *July* 1773;  
 and upon hearing counsel for all parties; and reading the said  
 agreement;

THE COURT ordered the defendant *Day* to account with and  
 pay to the plaintiff the several and respective tithes demanded  
 by the bill arising from the lands now or late in his occupation  
 which lie in the hamlet of *Little Catworth*, and comprised within  
 the perambulations made by the parishioners of *Great Catworth*,  
 and proved on behalf of the plaintiff in this cause, in the same  
 manner as if the plaintiff had obtained a verdict for the same  
 on the trial of the said issue, together with costs to this time;  
 and that the defendant Sir *John Read* do disclaim all right to  
 tithes within the said perambulation.

The Court order  
 it accordingly.

AND IT WAS FURTHER ORDERED, that the bill be dismissed,  
 with costs as to so much thereof as demanded an account of the  
 tithes taken by the defendant *Day* from the lands of other per-  
 sons; but that the same be without prejudice to any other re-  
 medy the said plaintiff may have against the defendant *Day* or any  
 other person for the same. The deputy remembrancer to take  
 the said account and to tax the costs.

SMYTHE, Chief Baron.

ADAMS, Baron.

PERROTT, Baron.

EYRE, Baron.

MICH. TERM,  
11. GEO. 3.

BRICKDALE *against* EARLE.

*Somersetshire, 18th December 1772.*

The impropriator of *West Harptree*, in *Somersetshire*, claims the tithe of hay from all the meadow land in the parish; and states,

that the two closes called *High Moor* and *West Moor* have been immemorially meadow land; that other lands have been inclosed, and have been reputed meadow;

that there are three closes, called *Highfield*, *Westfield*, and *Eastfield*, that have been laid down and become meadow;

that there have been waste lands inclosed, laid down for meadow, and ploughed up again;

that the defendants occupy great quantities of meadow lands of all the kinds above described;

THE bill stated, that the plaintiff's uncle, deceased, being seised of the rectory and parsonage impropriate of the parish of *West Harptree*, in the county of *Somerset*, and of all tithes whatsoever thereto belonging, duly made his will, dated the fifteenth of *January* 1766; that he thereby devised to the plaintiff in fee all the said rectory and parsonage impropriate, with the appurtenances; that he soon after died without altering his will; that the plaintiff thereby became entitled to the same, and to all tithes whatsoever to the same belonging; that there were considerable quantities of meadow and pasture land therein, wherefrom large quantities of hay were annually made; that there had been immemorially two closes or inclosed fields of meadow land, called *High Moor* and *West Moor*, otherwise *Dead Moor*, which were ancient meadow; that very large tracts of land had been often inclosed from out of the forests, heaths, waste lands, commons, commonable places, and woods within the parish; that the said inclosures, though converted into meadow and inclosed within the time of memory, had gained the name and reputation in the parish of meadow land; that great quantities of hay were annually made therefrom; that there had been immemorially three closes or tracts of arable land, called *Highfield*, *Westfield*, and *Eastfield*; that the said closes, or some parts thereof, had been, and then were, in the usual course of husbandry, laid down to pasture and grass; that they had been mowed or cut, and hay or fodder made thereon; that other parts of the said closes had, for a long time then past, been laid down to grass, and had become, by reputation, meadow land; that quantities of land had been, at sundry times within memory, inclosed and taken in from and out of the wastes, commons, woods, heaths, and forests in the parish, and thrown into divers closes and fields of arable land; that all the said last closes had been at times, in the usual course of husbandry, laid down to grass or pasture and mowed, and hay and fodder made thereon, and afterwards had been again ploughed and eared up; that the defendants were owners or occupiers of divers lands and tenements in the parish, some whereof were ancient meadow; that they had also occupied other closes of arable land that had been, for many years, laid down and converted into grass, with intent that the same should continue in like manner as ancient meadow; that they also occupied divers closes of land, which were sometimes ploughed and eared up, and at other times laid down to grass or pasture; from all which said closes and fields they had, for many years, reaped, cut, and carried away,



away, great quantities of corn, grain, hay, and fodder, and had, for many years, paid and satisfied the plaintiff's uncle, his agents or farmers, for all the tithes thereof: that they had refused to set forth and suffer the plaintiff to take the tithe in kind of hay or fodder cut or made on all or any of the said closes and meadows so by them occupied, or pay him any sum of money in lieu thereof, pretending, that there was an ancient *modus* to pay twopence an acre yearly for all meadow land called *Board Mead*, in lieu of the tithe of hay of all such meadow, and also one penny an acre for all arable land, when and as often as the same should be laid down to grass and hay or fodder made therefrom. The bill then charged, that there were no such *modus*es or customs, or if there were, that the appellation of *Board Mead*, and the said *modus*, extended only to the said two ancient meadows called *Highb Moor* and *West Moor*, otherwise *Dead Moor*; or that if it extended beyond the said meadows, it extended only to such meadows or closes of ancient meadow as had been and continued such from time beyond memory; and that if there was such *modus* of one penny an acre, the same only extended to the three ancient fields or closes of land called *Highfield*, *Eastfield*, and *Westfield*; or that if it did, it extended to none but such as were closes of arable land from time beyond memory. The bill then prayed, that the defendants might set forth the *single value* of their tithes of all hay or fodder made by them during the year 1769 upon any of the fields, closes, or meadows possessed or occupied by them during the said year, whereof no tithe had been set forth, or no sum of money paid by way of *composition*; that the plaintiff might be declared entitled thereto, he being content with the *single value* thereof; that he might be decreed to be entitled to the tithe in kind of all corn, grain, hay, and fodder, from time to time renewed and grown upon all and every the said lands, closes, meadows, and pastures; that all pretended *modus*es in lieu thereof might be declared void, or that the extent thereof might be ascertained and declared, and unto what lands, fields, closes, pastures, and meadows occupied by the defendants every such *modus* in particular extended or belonged.

BRICKDALE  
against  
EARLE.

but that they refuse to pay the tithe hay thereof, on pretence of a *modus* of ad. an acre for meadow land, and 1d. an acre for arable land laid down into grass; that if there are such *modus*es, the ad. an acre only extends to the two Moors;

and the 1d. an acre to the Three Fields;

and, demanding the *single value*, prays the defendants may be decreed to pay their tithes accordingly,

or the extent of the *modus*es be ascertained.

The defendants admitted, that the plaintiff was, by the will of his uncle, seised in fee, or otherwise well entitled, to the rectory and the tithes thereof, or to *modus*es in lieu thereof; and they insisted, that there had been immemorially a *modus* of twopence an acre for the tithe of *Board Meadow*, viz. meadow ground that never was ploughed, and one penny an acre for all other lands which had been ploughed and afterwards laid down to grass and mowed, in lieu of the tithe of hay and fodder; and that the same had constantly prevailed, except with regard to two farms.

The defendants insist on a *modus* of ad. an acre in lieu of all tithe hay arising from *Ancient Meadows*; and 1d. an acre in lieu of all tithe hay arising from *Modern Meadow*.

BRICKDALE  
against  
EARLE.

The defendant Earle says, that he is owner of the manor of *West Harptree* and other lands; that the defendant *Moss* is his tenant; and that the said *moduses* had always prevailed.

The defendant *Earle* said, that he had not, for twenty years past, occupied any lands in the said parish; but that the said *moduses* appeared, by a receipt dated the fourth of *August* 1727, given by the plaintiff's late uncle to the defendant's father, to have been constantly received in lieu of such tithes; that he was owner of a manor called *West Harp Tree Tilley*, and of divers lands in the said parish; that the defendant *Moss* was his tenant of part of the said lands; and that they were esteemed *Board Meadow*, and were particularly set forth in a survey of the *Demefne Lands* of the defendant situate in *West Harptree*, taken the eighteenth of *September* 1752; and he set forth a copy thereof, so far as related to *Board Meadow*; and said, that since the taking of such survey, *Long Close* had been added to the *Demefnes*, and was in his possession; that he did not know which of his said lands were *Board Meadow*, except as they appeared to be noted as such in the said survey, and in an old survey of the said manor which corresponded therewith. He admitted, that he had land in the ancient meadow called *High Moor*, and as he believed in *West Moor* or *Dead Moor*; but he denied, that any of the said lands were newly inclosed meadows, or that they had been inclosed within his memory; and said, that he could not tell which of the said closes now in pasture or grass were parcel of the said ancient fields or arable land called *Highfield*, *Eastfield*, and *Westfield*.

The defendant *Moss* also insists on the *moduses*.

The defendant *Moss* admitted, that he rented a farm and lands of the defendant *Earle*; and said, that the lands were *Board Mead* or ancient meadow, for which he had constantly paid the aforesaid *moduses*, at *Old Lammas*, in lieu of tithe of hay or fodder till the year 1767.

The defendants admit, that there are the ancient closes called *High Moor* and *West Moor*;

Both the defendants denied, that any of the said closes had been inclosed from the wastes and commons, or otherwise within memory, or that any tithe hay in kind had ever been paid for them to the plaintiff's uncle; and said, that they believed that there were considerable quantities of meadow and pasture land in the said parish, whereof great quantities of hay were annually made; that, from time beyond memory, there were anciently two closes or inclosed fields or meadow land, called *High Moor* and *West Moor* or *Dead Moor*, which were ancient meadow; but that they could not tell, whether any tracts of land had been at times inclosed from out of the forests, heaths, waste land, and commons within the said parish, save a considerable quantity of land in the *forest of Mendip*; or whether such inclosures had been converted into meadow and inclosed within the time of memory, or had gained the name of meadow land and had produced hay as suggested by the bill; that they believed, there had been anciently, and from time beyond memory, three closes, called *Highfield*, *Eastfield*, and *Westfield*; but that they knew not where the same lay, or by whom or in what manner

manner they were divided and inclosed ; or whether some parts thereof were at times, in the usual course of husbandry, laid down to grass or pasture and mowed, and hay and fodder made therefrom ; or whether other parts of the said closes were, or for a long time had been, laid down to grass, or had by reputation become to be called meadow land, and hay made therefrom, as suggested in the bill ; nor whether great quantities of land had been, at sundry times within memory, inclosed and taken from the common waste fields and heaths within the said parish, and thrown into closes and fields of arable land, and had been at sundry times, in the usual course of husbandry, laid down to grass and pasture and mowed, and hay and fodder made thereon ; or whether the same were afterwards ploughed and eared, save the said lands in the forest of *Mendip* ; that they neither knew or believed that the said *modus* of twopence an acre for *Beard Mead* extended only to the two ancient meadows called *Dead Moor* ; but they admitted, that it extended only to such meadows or closes of ancient meadow as had been and continued such from time beyond memory, and not to such as had been within memory ploughed, and for many years laid down to grass with intent to remain for any long term, or to such as, within memory, had been inclosed and taken from the heaths, wastes, woods, and forests within the said parish ; nor that the said *modus* of one penny extended only to the three said ancient fields ; but that, on the contrary, they believed that it extended to all lands within the parish, except such ancient meadow as had been never ploughed called *Board Mead*, and the two farms aforesaid. They admitted, that the two pieces of ground called *High Moor* and *Newton Close Paddock* formerly belonged to *High Moor* and *West Moor* or *Dead Moor*, which they admitted to be ancient meadow ; but denied, that any of the lands were newly inclosed meadow, or inclosed within memory, or that they knew whether any of the said closes then in grass or pasture were parcel of the ancient fields of certain arable land called *Highfield*, *Eastfield*, and *Westfield*.

The defendant *Moss* admitted, that he had mowed part of the said lands ; and insisted on the said *moduses* in the lieu of the tithe of hay and fodder.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on both sides ; and upon hearing counsel ; and reading an order to prove and read exhibits *viva voce* at the hearing on the plaintiff's part ; and on reading the following entries out of an ancient book from the registry of the *Bishop of Bath and Wells*, intitled, "*Register, 1329,*" viz. fo. 162, dated the fourth *calend. Decemb. 1336*, and fol. 297, dated the fifth *calend. Decembris 1344* : and reading, on behalf of the defendants, fifteen exhibits, beginning the twenty-fourth of *June 1727*,  
and

BRICKDALE  
against  
EABLE.

that the said *modus* of 2d. an acre was not confined to the two meadows called *High Moor* and *West Moor*.

The cause heard.



BRICKDALE  
against  
EARLE.

and ending the tenth of *September* 1767, and signed by various persons, for tithes; and reading, for the plaintiff, letters patent from *Queen Elizabeth*, dated the eleventh of *February*, in the nineteenth year of her reign, whereby the said queen, for the considerations therein mentioned, granted and demised to *T. Brickland*, and others therein named, the rectory of *West Harptree* and tenths of corn, grain, hay, and all other tenths thereto belonging, both great and small, to hold the same for such time, and at and under such rents as are therein mentioned, reserved, and contained; and reading several depositions;

The defendants  
decreed to pay a  
modus of 2d. an  
acre for their  
land when mow-  
ed and the grass  
made into hay.

THE COURT ordered, by consent, the defendants, or one of them, to account with the plaintiff, as impropiator of *West Harptree*, during the time demanded by the bill, now, and for the future, after the rate of twopence an acre for all the lands situate in the parish of which the defendant *G. Earle* was the owner, or the other defendant *W. Moss* the occupier, when such lands had or should be mowed, and hay made thereon, in lieu and satisfaction of the tithe of the said hay, such payment of twopence an acre for lands mowed appearing, on the pleadings of this cause, to be the modus prevailing within the said parish of *West Harptree* for tithe hay; the parties, plaintiff and defendants, to abide by their own costs.

SMYTHE, Chief Baron.

ADAMS, Baron.

PERROTT, Baron.

HILARY TERM  
13. GEO. 3.

WETHERHEAD against BRADSHAW.

Lancashire, 25th January 1773.

The rector of  
*Halton*, in *Lan-*  
*castre*, claims the  
tithes in kind;  
and states,  
that the defend-  
ant had, for four  
years, occupied  
the *Demesne*  
*Lands*, and had  
had titheable  
matters there-  
on;

that he was in  
arrear for *Eas-*  
*ter* offerings;

THE bill stated, that the plaintiff, on the sixth of *December* 1762, was presented to the rectory of the parish of *Halton*, in the county of *Lancaster*, and had thereby become entitled to all tithes, *Easter* offerings, and other ecclesiastical dues arising therein; that the defendant, for four years past, had been owner and occupier of lands therein, whereof one hundred acres had been called the *Demesne Lands*; that he had, during the said years, grown thereon, and on his other lands, corn, grain, hay, and clover; that he had fed thereon barren and unprofitable cattle of his own and of other persons; that a great number of cattle had been fatted thereon, part of which he had sold, and killed the remainder for his own use; that he had grown thereon turnips, which had been severed and eaten by unprofitable cattle or sold; and that the tithes of all the said matters ought to have been paid to the plaintiff. The bill further stated, that there were due to him at *Easter* yearly, one penny for each plough, one penny for every garden, twopence for *Easter* offerings, one penny for bread and wine, twopence

twopence for each man servant, one penny a maid servant, and one penny for every other communicant. The bill further charged, that the defendant was owner of a corn mill in the parish; that it had been erected within twenty-five years past; and that he or his servants had in each year ground corn, grain, and malt therein for mulcture, *to wit*, twenty loads a day one day with another; that he had thereby gained the clear sum of eightpence for each load so ground; and that the tithe thereof was due to the plaintiff, it being a personal tithe, and he being entitled to the tenth part of the clear profits thereof after payment of all necessary charges. The bill further charged, that the defendant had in his custody divers writings belonging to the former rectors of the parish; that there were entries therein proving the plaintiff's right to such tithes; that he refused to produce the same, and pretended that tithes in kind were not due, but that a *modus* of six pounds, thirteen shillings, and fourpence, in lieu of tithes in kind, had been immemorially paid. The bill then charged, that there was no such a *modus* of six pounds, thirteen shillings, and fourpence; and that the *Demesne Lands* were not exempt, for that the several *moduses* which had been immemorially paid yearly to the rector of *Halton* were paid on different days of the year, and out of eighteen different parcels of land dispersed in several parts of the parish, some of which were in lieu of great tithes, others of hay only, and others in lieu of all tithes and offerings, all which were distinct *moduses*, each covering one particular tenement, and which together made up six pounds, thirteen shillings, and fourpence a-year; but that no part of the lands covered by such *moduses* ever were the *Demesne Lands* of *Halton*; and that the defendant never was owner or occupier of any of the lands charged with such *moduses* until *February* 1768, when an estate at *Highfield* was conveyed to him; and that it was particularly mentioned in the agreement for the said estate, that it was subject to a *modus* of one shilling and eightpence in lieu of tithe hay and corn; that neither the defendant, or any former occupier of his said lands, did ever (except as to the lands so purchased) pay any *modus* composing part of the said six pounds, thirteen shillings, and fourpence; that, so far from pretending an exemption from tithes by the said *modus* of six pounds, thirteen shillings, and fourpence, the defendant, when the plaintiff's tithes were demanded of him, insisted on a *modus* of fourpence, as having been immemorially paid in lieu of all tithes on the *Demesne Lands*, and had tendered the arrears of such *modus* for twenty years past; but that he, the plaintiff had always refused to accept of the same; and insisted on his right to the tithes in kind; and that the defendant had never pretended, that there was any other *modus* than the fourpence until the plaintiff filed his bill. The bill further charged, that tithes in kind were due for all the hay and clover grown on any of the defendant's lands, and particularly on all his

WETHERHEAD  
 against  
 BRADSHAW.

that he was in the occupation of a corn mill, at which he had ground great quantities of grain;

that he had refused to pay the tithes thereof, on a pretence that a *modus* of 6l. 13s. 4d. only was due, although he had writings in his custody which proved the contrary;

that there were several *moduses* for distinct tenements which amounted to that sum, but which had no relation to the *Demesne Lands*;

that formerly, so far from pretending that the *Demesne Lands* were covered by the said *modus*, he insisted on a *modus* of 4d. an acre in lieu of the tithes thereof; that there was no *modus* of 1d. a rood in lieu of the tithe hay,

WETHERHEAD  
against  
BRADSHAW.

either for An-  
cient Meadow  
or for New  
Leys;

that the mill  
had been newly  
erected.

his lands not called *the Demefne Lands*; that no *modus* of one penny a rood had been immemorially paid in lieu of tithes of any meadow grounds in the said parish, or of any grounds called *Leys*; that he had, for several years past, been occupier of several ancient meadow lands in the parish, neither *Demefnes* nor *Leys*; that such lands only as had been converted from arable to grass, and afterwards used as meadow, had been called *Leys*, so long as they were used as meadow or pasture; that all such lands, when arable, had immemorially paid to the rector of the said parish tithe in kind of all corn; and that the greater part of the lands in the said parish called *Leys*, and particularly such of the defendant's lands as had, within the memory of many persons, been converted from arable to grass, and before such conversion been constantly used as arable, had paid tithe in kind; that such pretended *modus* of one penny a rood, in lieu of the tithe of all meadow called *Leys* (if any such ever existed, which the plaintiff did not admit), was void, as being uncertain, and apparently to the rector's great injury, for thereby it would be in the power of an occupier of arable land to convert it into *Leys*, and thereby defeat the rector of his tithes; and to convert ancient meadow and pasture into arable, and then lay it into grass, and occupy it as *Leys*, whereby the rectors of the said parish would be defeated of all tithes in kind which had been paid for such ancient meadow and pasture lands. The bill then charged, that the defendant had converted into arable several parcels of land in the parish, which were ancient meadow or pasture, and had never been ploughed, and had laid the same into grass, and occupied the same as hay lands, and then pretended that they were exempt from tithes, except the said *modus* of one penny a rood. The bill further charged, that THE MILL was not erected upon the scite of any ancient mill; and that the whole, or the greater part thereof, was built upon a parcel of waste ground, and particularly that the mill where the defendant ground his wheat and malt was a new erection, and was built by him, the defendant, within eighteen years past: and he insisted, that the said mill was not exempt from the payment of tithes; but that such tithes as aforesaid were due to the plaintiff for the same. The bill therefore prayed, that the defendant might be decreed to an account with the plaintiff for the several titheable matters aforesaid, and for *Easter offerings* and other ecclesiastical dues during the several years in the bill mentioned, and to pay the plaintiff the value thereof.

The defendant admits, that he was seised in fee of *Halton Hall*, and of *the Demefne Lands* thereto belonging; and insists on the *modus* of 6l. 13s. 4d. a-year in lieu of the tithes thereof;

The defendant admitted, that the plaintiff was rector of *Halton*; that during the time in the bill mentioned, he, the defendant, had been seised in fee of *Halton Hall* and *the Demefne Lands*,  
Lands,



*Lands*, the particular closes of which, and the number of acres therein contained (one hundred and thirty-three acres) he stated in his answer; and that he had purchased the same twenty years ago; and he insisted, that the said house and *demesne lands* had immemorially been exempt from tithes; that a *modus* of six pounds, thirteen shillings, and fourpence a-year in lieu thereof had been paid to the rector, and was still payable, as would appear by an inquisition taken in the twenty-sixth year of *Henry the Eighth*, upon a commission then issued to enquire into the value of ecclesiastical benefices; and by an inquisition taken in the thirty-fifth year of *Edward the Third*, after the death of *Sir William De Dacre*, lord of the said manor, and patron of the advowson of the said rectory, whereby it appeared, that the income of the said church was ten marks, or six pounds, thirteen shillings, and fourpence a-year; that the lords of the said manor and owners of the *Demesne Lands* covered by the said *modus*, in or about the twenty-sixth year of the reign of *Queen Elizabeth*, sold off part of the *Demesne Lands*; and that, by agreements made on such purchases, the whole of the *modus* of six pounds, thirteen shillings, and fourpence, was thrown upon and paid by the owners and occupiers of the lands sold off, so as to exonerate the mansion-house and the *Demesne Lands* remaining in the hands of the lord of the manor from any part of the said *modus*; that the same had ever since been paid by the owners or occupiers of the lands so sold off; that he had ever since his said purchase held the *Demesne Lands* free from tithes; and he insisted he had a right so to do. He said, that in a valuation made of the rectory in the year 1716, pursuant to an act of parliament made in the first year of *George the First*, the tithes of corn of all sorts in the said parish were valued only at forty pounds a-year, whereby, as he apprehended, the person who made such valuation did not consider the *Demesne Lands* as liable to tithes in kind, and which were therefore not estimated in such valuation. He admitted, that he had occupied the several particulars of land in his answer mentioned, which were part of the *Demesne Lands*, and covered by the said *modus*; and said, that he occupied no other lands. He also said, that he had set out a particular account of the number of acres of the *Demesne Lands* occupied by him in each year which had been sown with corn, and the values thereof, in case tithes in kind had been payable, and also what had been mowed and made into hay and clover grass, and how much had been depastured in each year, and the value of the tithes thereof respectively. He also said, that no tithe in kind had, within time of memory, been due or payable within the said parish for hay or clover grass, for that a *modus* of fourpence an acre for hay ground, or some other *modus* in lieu of tithe hay in kind, had been always due to the rector; and he insisted, that no tithe in kind was due, but that fourpence

WETHERHEAD  
against  
BRADSHAW.

that the former possessor of the manor sold part of the *demesne lands*, and threw the payment of the *modus* on the purchaser, leaving the Hall and the residue of the lands tithe free;

that the said lands had not been included in a valuation of the tithes;

that there was a *modus* of 4d. an acre in lieu of the tithe hay of the other lands;

WETHERHEAD  
against  
BRADSHAW.

that the mill  
was to be con-  
sidered an ancient  
mill,

though it had  
been rebuilt;

that he occupied  
other lands, and  
had paid the  
plaintiff the  
tithes thereof  
according to a  
composition;  
that there is a  
modus of 1d. a  
rood for hay  
ground called  
Leys;

that a prescrip-  
tive rent of 4d.  
a-year was due  
in lieu of the  
corn tithes;

and had been es-  
tablished by an  
award;

fourpence an acre, or some other *modus* in lieu thereof, was due. He further said, that he could not set out a particular of the cattle agisted on the said lands of his own, and of other persons, nor the values of such agistment; but he stated what turnips he had, and the value thereof, and set out an account of the number of the cows, sheep, calves, and lambs which he had in each year, and the value of the tithe of the wool, calves, and lambs, and also the number of persons in his family; but he denied, that any *Raster offerings* were due under such exemption. He admitted, that he owned a *corn mill*; and insisted, that it was an *ancient manor mill* within the *Demesne Lands*; that it had been standing within the said manor prior to the reign of *Edward the Second*, and had been washed down; and he insisted, that the said new mill ought to be considered as an ancient mill, and that therefore no tithe was due for the same; and he stated what quantities of corn, malt, and hops, had been ground thereat, and the value of the mulcture thereof, and what expence he had been at in rebuilding the same; and averred, that the expences had on an average, one year with another, amounted to more than the mulcture, so that no profit had arisen to him for the same. He also said, that he occupied divers other lands in the said parish, and that he had duly paid the plaintiff for the tithes thereof, according to a composition made by the plaintiff with him and other occupiers of land there; and he insisted, that the tithes of such other lands in his occupation, not being *demesne lands*, were not payable in kind, but that fourpence an acre, or some other *modus*, was due in lieu thereof. He also insisted, that an ancient *modus* of one penny a rood for all hay growed in the said parish (except the lands tithe free or covered by a *modus* after-mentioned), and which are called *Leys*, had immemorially been paid to the rector in lieu of tithe hay in kind. He further said, that an ancient church stood on part of the *Demesne Lands*, close to the manor-house, which he believed was built by the lords of the manor, and endowed with a stipend of six pounds, thirteen shillings, and fourpence, as a full composition in lieu of all tithes payable out of the *Demesne Lands* to the rector of the said parish, the same being a peculiar of itself. He also said, that in 1666 *B. Lawrence* was rector of *Halton*, and *C. Carus* lord of the manor, and owner of the said house and *demesne lands*; that the said *Lawrence* then demanded tithes in kind for the *Demesne Lands*; that disputes arising thereupon, the same were referred to *T. Simpson*, who, by his award dated the twenty-ninth of *March* 1666 (reciting, that he was fully satisfied the tithes of corn, grain, and other things from the *Demesne Lands* were never paid in kind, but a small prescriptive rent of fourpence a year in full of all tithes for the *Demesne Lands*), did award, that the said *Carus* should, on or before the tenth day of *April* then next, pay to the said *Lawrence* one shilling and eightpence,

eightpence, being the said prescriptive rent of fourpence a-year for five years then in arrear, and should continue to pay the said fourpence at *Easter* yearly for the tithe of the *Demesne Lands*; and that the said *Lawrence* should enter the said payment of fourpence in his said tithing-book; that after he had purchased the said manor and *Demesne Lands*, he caused the said fourpence to be annually tendered at *Easter* in lieu of the said tithes, although he apprehended the *Demesne Lands* were not liable to pay any tithes in kind, or any *modus* in lieu thereof: and he insisted, that if such general exemption could not be proved, the said prescriptive payment of fourpence a-year ought to be deemed a full discharge of all tithes for the said *Demesne Lands*. He also said, that he had not in his custody, nor ever saw any conveyances whereby it appeared, that a *modus* of six pounds, thirteen shillings, and fourpence had been immemorially paid in lieu of the tithe of the *Demesne Lands*; and insisted, that the owners of the manor did, in their conveyances of part of the *Demesne*, charge the whole of the said *modus* on the lands so sold. He further said, that the said mansion-house had been plundered in insurrections, and once burnt by the *Scots*, whereby many of the family deeds had been destroyed, by which deeds the original of such exemption would have been manifested. He further said, that he believed that there might be such several *moduses* payable out of eighteen parcels of land lying dispersed in the said parish, and payable as in the bill; and that some of such *moduses* were paid in lieu of great tithes only, some in lieu of tithe hay only, and others in lieu of all tithes and *Easter* dues, and which together amounted to six pounds, thirteen shillings, and fourpence; but whether such *moduses* were originally distinct, and covered one particular tenement, he could not say; but that the same had been originally paid out of the six ancient estates of which the mansion-house and the *Demesne Lands* now belonging to him had been formerly one, and therefore ought to be exempt from payment of tithes in kind. He admitted, that he did, previous to the filing of the bill, pretend, that his mansion-house and the *Demesne Lands* were discharged from the payment of any other *modus* than that of fourpence, which he then apprehended was the *modus* payable for the same, and which was part of the said original *modus* of six pounds, thirteen shillings, and fourpence; and that he had not paid the plaintiff any of the tithes in kind, or any satisfaction for the same, but had paid the tithes and sums stated in the bill, in lieu of tithes of the lands that were not *demesne*. He insisted, that tithes in kind were not due for the said mansion-house and *Demesne Lands*, but that the same were exempted by the *modus* aforesaid. He denied, that the mill was erected on waste ground as an entire new erection where no building had ever been made, or upon any other ground than the site of the *Old Manor Mill*. He admitted, that he had built a dwelling-house and other conveniences for his millers and

WETHERHEAD  
against  
BRADSHAW.

that he had regularly tendered the same;

that there might be several *moduses* payable out of eighteen parcels of land amounting to 6l. 13s. 4d.

of which the *Demesne Lands* were formerly one.

that the mill was rebuilt on the site of the *Old Manor Mill*;

servants



WETHERHEAD  
against

BRADSHAW.

that a penny a  
rood had been  
immemorably  
paid for Ley  
Grounds;

according to the  
measure of the  
country;

that Ley Grounds  
were understood  
to be dry lands  
ploughed,

and such lands  
as were too dry  
to plough.

servants on a vacant piece of ground adjoining to the said mill. He also insisted, that no tithe hay or clover cut from any of his lands in the said parish which are not called *Demesne*, but were distinguished by the name of *Ley*, was due to the plaintiff, but that an ancient *modus* of one penny a rood had, for time immemorial, been payable in lieu of tithes of hay and clover yearly arising on the said lands called *Ley* at *Easter* yearly, and he set forth the names of the several closes for which he claimed the benefit of the said *modus*, with the contents thereof. He also said, that such *modus* of one penny a rood had, for time immemorial, been paid for such *Ley* according to the *customary measure* of the country, and not according to the *statute measure*; and he insisted, that the same ought in like manner to be paid for the future. He also said, that all such lands in the said parish as were of a soft moist quality, and which generally produced large quantities of grass and hay in their natural state, and were improper for other cultivation, were known by the name of *the Meadow*, and the hay thereon called *meadow hay*; and that all such lands as were of a dry hard quality, and which might be mowed, pastured, or ploughed at pleasure, and as the course of husbandry required, were called *Arable Lands*, which when in tillage were called *Ploughed Lands*, and when in pasture or mowing were called *Ley*; and that the hay thereof were of two sorts; that it was called *clover hay* when raised from clover seed, and *ley hay* when made from natural grass; that all such other dry hard lands in the said parish as were, from the shallowness of the soil, the quantity of stones therein, or the declivity of their situation, incapable of being ploughed to advantage, and therefore had been always pastured or mown, were also always called *Ley* or *Ley Ground*, as the hay therefrom was called *ley hay*; that such distinctions had always prevailed, and been understood in the said parish and the neighbourhood. He denied, that it would be in the power of him, or any other occupier of ancient meadow land in the said parish, and which had never been occupied as arable, by converting it into arable, and afterwards laying it to grass and occupying it as leys for growing hay, to defeat the plaintiff and his successors of the tithes arising on such ancient meadow and pasture. He said, that he had in his custody an *Easter book* formerly belonging to *Mr. Ruston*, and also several *Easter books* lately belonging to *Mr. Wilson*, who were both rectors of the said parish, which he left for the plaintiff's production, and had no other books; and that it appeared by them, that no tithe hay in kind was due for the said lands within the said parish; except the said *modus* of one penny a rood for the said lands called *the Ley*. He said, that he believed that the parish of *Halton* was divided into two districts, the one called *the Lower or Halton End*, and the other *the Upper or Haughton End*; that there was in *Halton End* but a very small quantity of meadow ground, and that therefore  
the

the *modus* established in lieu of the tithes being so inconsiderable had been neglected to be received by the rector of the said parish; that in *Haughton End* there had, for time immemorial, been many meadows; that a *modus* of one penny had been paid to the rector of the parish by every occupier of meadow ground within the said last-mentioned district, in lieu of tithes of meadow ground within the same; that such *modus* had been accepted by the rectors for the time being, and the same had been paid at *Easter* yearly, or as soon after as demanded; and that it appeared by such *Easter* books, that the said *modus* had been so as aforesaid constantly paid and received in lieu of the tithes of the meadows in the said last-mentioned district.

WETHERHEAD  
against  
BRADSHAW.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel several days; and reading part of the defendants answers; an order to prove exhibits *viva voce*, &c. viz. a copy of the inquisition taken on the attainder of *Ramulphus Lord Dacre*, dated the twenty-eighth of *August*, in the sixth year of *Edward the Fourth*, touching the manor of *Halton*; a copy of the grant from the crown, in the thirty-first year of *Queen Elizabeth*, of the manor of *Halton* to *William Tipper* and *Robert Darwe*; several depositions; the copy of a terrier of the parish of *Halton*, kept in the registry of the episcopal court of *Chester*, but the Court refused such copy to be read, as not being legal evidence; and on reading the first item in an *Easter* book of *Rishton*, clerk, a former rector of the said parish, containing entries of particular *Easter* reckonings; and on reading the following evidence for the defendant, viz. a copy of part of the book called *DOOMSDAY*, kept in the chapter-house at *Westminster*, viz. "*Fwerkshire West Riding Agemundreness Mm. in Halton habuit comes tofti sex carucatus ter. at Geldham*;" also a copy from the first fruits office of the valuation of the rectory of *Halton*, taken in the twenty-sixth year of the reign of *Henry the Eighth*, viz. "*Decanatus de Kendal—Halton Rectoria Valet in Mansione cum Terr. Dominical eidem annexat 6l. 13s. 4d. Decim Granorum 10l. &c.*;" also a decree, dated the twenty-fifth of *June* 1753, in the court of the duchy of *Lancaster*, between *Thomas Whitehead*, plaintiff, and *Thomas Carus* and others, defendants; an indenture tripartite, dated the twenty-first of *April* 1662, signed *Thomas Carus*, *Nathaniel West*; an award, dated the twenty-ninth of *March* 1666, signed *Thomas Simpson*; and reading several depositions; and upon the defendant's counsel offering to read a copy of an inquisition taken *post mortem* of *Sir William Dacre*, in the thirty-fifth year of *Edward the Third*, so far as the original thereof was legible, and the Court refusing to permit such copy to be read, as not being stamped according to the form of the statute in that behalf made; and reading the

The cause  
heard.

The evidence  
read.

Evidence re-  
jected.

Evidence re-  
jected.

WETHERHEAD  
against  
BRADSHAW.

Evidence re-  
jected.

The bill dismissed, as to the tithe hay of the *Ley Grounds*; and the mulcture of the mill; and the tithes of corn, hay on the natural meadow, turnips, and agistments decreed.

part of the bill which related to the tithe of milk; the depositions of *H. Smith*, to the eighth instant; and of *J. Parker* to the seventh instant; an indenture, dated the fourteenth of February 1660, between *Thomas Carus* and *Sir George Middleton*, and others; another indenture, dated the fourteenth of May, in the first year of *Charles the First*, between *Charles Carus* and *J. Carus* and *Edmund Berwick*; and on reading part of a book in the custody of his majesty's remembrancer of this court, intituled "*Tenoris Rot. de particulis Antiquæ Taxationis Bonor: Spirit: et Temporal: cleri Dioces Ebor, pen Scai Domi Regis 20th Edw. 1. decanatus de Lonsdale et Kendall, Ecclesie de Halton, 18 Marcas*;" a copy of a writ and inquisition *post mortem*, of *Sir William Dacre*, dated the seventh of August, in the twenty-fifth year of *Edward the Third*; and upon producing the copy of an imperfect record of an inquisition *post mortem*, of *W. De Dacre*, in the thirty-fifth of *Edward the Third*, as further evidence for the said defendant; and the Court refusing the same to be read; and upon hearing the reply; the cause was ordered to stand over for the judgment of the Court; and the same now standing for the opinion of the Court;

THE COURT ordered the bill, as to the demand for tithe hay on the *Ley Grounds*, and for the tithe of the mill, and for *Easter offerings*, to be dismissed; the deputy remembrancer to take an account of what was due for the tithes of corn, and hay on the natural meadow land; turnips; the agistment of barren and unprofitable cattle; and no costs to be paid by either party to the other; further directions to be reserved until after the report.

THE COURT FULL.

HILARY TERM  
13. GEO. 3.

MORGAN against NEVILLE.

Essex, 25th February 1773.

The rector of *Little Leighs*, in *Essex*, is entitled by the custom of the parish, to have the tithe milk delivered at the church porch.

THE rector of *Little Leighs*, in *Essex*, claimed all the tithes, both great and small, which had arisen therein, particularly the tithe of milk; and, insisting, that by the custom of the parish, the tithe of the milk ought to be brought to the porch of the church, for the use of the parson, prayed an account of the tithe of milk, which had been withheld since the year 1765, and a satisfaction for the same.

The defendant insisted, that he had set out every tenth meal of milk in clean pans or vessels; that the plaintiff might have fetched it away, if he had thought proper; but that having neglected so to do in a reasonable time, he had caused the said tithe milk to be thrown away; and he denied the custom stated in



in the bill, and prayed, that an issue might be directed to try it.

MORGAN  
against  
NEVILLE.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on the part of the defendant ; and now upon hearing counsel of both sides ; and reading an order, made the third day of *February* instant, for reading the depositions taken in a former cause (a) ;

THE COUNSEL for the defendant objected to the reading the said depositions ; and on debate of the matter, THE COURT over-ruled the objection.

The depositions were accordingly read for the plaintiff ; and also the depositions taken in this cause, on behalf of the defendant ; and after hearing counsel on both sides ;

THE COURT ordered the defendant to account for the tithe milk, during the time demanded by the bill, and pay the plaintiff the value thereof, with his costs of suit.

(\*) Vide ante, 153.

SELLON against PARRY.

HILARY TERM  
13. GEO. 3.

*Middlesex, 25th February 1773.*

THE bill stated, that the parishioners and inhabitants of the parish of *Saint James Clerkenwell*, in the year 1656, purchased the church yard, and the right of patronage of the said parish, chargeable only with the yearly payment of four pounds, eighteen shillings, and ninepence, for the perpetual maintenance of a curate to celebrate divine service therein ; that the same were conveyed to trustees for the only use and benefit of the parishioners and inhabitants ; that in the tenth year of *Queen Anne*, an act of parliament passed empowering commissioners to build fifty new churches, or to make chapels parish churches ; to provide houses for ministers ; and to cause church yards to be made and inclosed for such new parishes ; that the said act directs, that there shall be a rector and succession of rectors in such new churches and parishes, to have the cure of souls of the inhabitants in them, and impowers the said commissioners to treat and agree with all persons, having a right or interest in the advowson, patronage, or nomination of the church in every parish, from which any part shall be taken, for the more effectual dividing and separating such parish, and the tithes, oblations, dues, and revenues belonging to the church, and to agree concerning settling the rights of patronage of every new church for ever, " PROVIDED ALWAYS, that this " act shall not extend to deprive the successors of the present " rectors, vicars, and other ecclesiastical persons, having the " cure of souls of or in the parish church, out of which any

The curate of the perpetual curacy of *Saint James*, in *Clerkenwell*, is entitled to all the tithes and profits arising from the parishes of *Saint James* and *Saint John*.  
S. C. 5. Burr.  
2762.

F f 2

" part

SELLON  
against  
PARRY.

“ part or district shall be divided or taken, of any tithes,  
 “ dues, or profits belonging to any one of them respectively,  
 “ until such agreements or settlements, for the more effectual  
 “ dividing and separating any such parish respectively, be made  
 “ and inrolled, and take effect as aforesaid, with relation to  
 “ such successors respectively; but that the successors of the  
 “ incumbents, till such agreements and settlements be made  
 “ and take effect, shall and may have, hold, and enjoy the  
 “ the said respective rectories, vicarages, and curacies, and the  
 “ tithes, dues, and profits thereof, in as ample manner as if  
 “ this act had not been made, and as the present rectors, and  
 “ other ecclesiastical persons, who are to hold and enjoy the  
 “ same, during their respective incumbrances, are of right to  
 “ hold and enjoy the same.” That the commissioners under  
 the said commission, in the year 1723, purchased of *Simon Mitchell*, since deceased, a chapel called *Aylesbury Chapel* and two  
 houses adjoining, in the said parish of *Saint James, Clerkenwell*; that the said chapel, soon after such purchase was consecrated; that the said commissioners also described a district or division out of the said parish of *Saint James*, and called the said chapel and district *Saint John's church* and parish; that these proceedings were inrolled in chancery, according to the directions of the act; that the parishioners and inhabitants of the parish objected to such division at the time it was made, and had never consented to a separation of this or any other kind, nor entered into any agreement with the commissioners or others concerning settling the right of patronage of the said new church called *Saint John's*, or concerning the division of the parish, the church and poor, rates for which were still made by the officers of the old parish of *Saint James*, and collected equally through both parishes; that the ministers of *Saint James, Clerkenwell* had constantly and uninterruptedly done and continued to do duty in the district or parish of *Saint John*, such as baptizing children there, marrying and churching persons residing therein, and receiving fees for the same; that the rectors of the new parish or church of *Saint John* however (under the notion of having the cure of souls of the inhabitants within the district thereof) had successively taken upon themselves to baptize, marry, church, and bury in the said district, and to keep registers of the same, but not without repeated objections and remonstrances from the ministers of the old parish of *Saint James*; that in 1729 the right of election and appointment of a curate or minister to the said parish of *Saint James* was decreed by this court (a) to be in the parishioners and inhabitants of the parish of *Saint James*, of which the inhabitants of *Saint John*, paying to the rates for the church and poor, were a part; that the plaintiff having

(a) Trin. Term, 3. Geo. 2. Attorney General v. Nicholson.

been

been duly elected and licenced to the said curacy of *Saint James*, according to such determined right, frequently called upon the defendant (who was minister or rector of the said district of *Saint John*, and had taken upon him to baptize, marry, church, and bury within the said district) for the fees, dues, and profits received by him within the said district, belonging to the plaintiff from the time he became so elected and licenced into the said curacy of *Saint James*, but without effect; that the plaintiff thereupon brought his action in the court of king's bench for the same, and in order to end the said dispute entered into an agreement with the defendant, as set forth *verbatim* in his bill; that in pursuance of the said agreement a trial was had on the said action, and a verdict was found for the plaintiff, and ten pounds damages, subject to the opinion of the court, upon a question in the said bill mentioned; that notwithstanding the said verdict and judgment the defendant had performed divers ministerial offices within the said district, and had received fees and gratuities for the same; that the plaintiff applied to him by letters requiring him to desist from performing the said offices of marriage, baptism, burial, and churching in the said district or parish of *Saint John*, taken out of the parish of *Saint James, Clerkenwell*, and by accounting with and paying to the plaintiff the fees and gratuities received by him for the performance of such ministerial offices, he being entitled under the said verdict and judgments to all tithes, dues, and profits for the performance of all such ministerial offices, in as ample a manner as if no division had been made, according to the proviso in the said act of parliament; but that the defendant, in contradiction, as well to the said act as to the said agreement, verdict, and judgment, not only refused to give him, the plaintiff, any account of the fees and gratuities received by him for the performance of such offices, but also threatened, that if he attempted to interfere with him therein, he would litigate the point to the last extremity. The bill therefore prayed, that the defendant might account with the plaintiff, and pay him all such fees and gratuities as he had received for the performance of the said ministerial offices, or any or either of them, and all damages and costs of the said verdict and judgment in regard that he still continued to perform the said ministerial offices, without accounting to the plaintiff for the same, and had put the plaintiff to the further trouble and expence of this suit, and that he might be restrained by an injunction from the performing such offices for the future.

SEELON  
against  
PARRY.

See 5. Burr.  
2762.

The defendant admitted, that the parishioners of *Saint James, Clerkenwell*, purchased the church, church-yard, and right of patronage of the said parish, chargeable only with the yearly payment of four pounds, eighteen shillings, and ninepence, for the perpetual maintenance of a curate to celebrate divine service; that the same were conveyed to trustees for the benefit of the parishioners; that the statutes of *Queen Anne* were



SELLON  
against  
PARRY.

passed; that there was an instrument inrolled in the court of chancery, whereby it appeared that the commissioners under the last act, about the year 1723, purchased of *Simon Mitchell*, a chapel called *Aylebury Chapel* and two houses adjoining, in the parish of *Saint James, Clerkenwell*; that the said chapel was afterwards consecrated; that the commissioners did also describe and ascertain a district or division out of the said parish of *Saint James, Clerkenwell*; that the said chapel and district were set out and ascertained by them to be, to all intents and purposes, the district, parish church, and parish of *Saint John, Clerkenwell*; that the said parishes were thereby, with respect to the bounds and limits of the same, well and sufficiently divided; that the bounds and limits of each of the said parishes were thereby fully set out and ascertained; that it appeared from THE VESTRY BOOK of the parish of *Saint James's*, that the rectory and vestry of the parish of *Saint John* did, about the year 1723, call upon the minister, churchwardens, and overseers of the poor, and principal inhabitants of the parish of *Saint James*, to meet and treat with them touching the more effectual division of the said parishes, as to all church and parish rates, pursuant to the said act; that they received no answer thereto; that none of the parishioners and inhabitants of *Saint James's* did enter into any agreement with the said commissioners or others, concerning settling the right of patronage of the said new church called *Saint John*. But he contended, that the presentation to the church of the said parish of *Saint John* was and had been ever since it was constituted a parish, in THE CROWN of *Great Britain*; the patrons of the said old parish of *Saint James, Clerkenwell*, not having met the commissioners under the statute 9. *Annæ* to settle the right of patronage; and he said, that the parishes having been fully and clearly divided in manner aforesaid, he had since such division been presented to the parish church of *Saint John* by *Lord Camden*, late chancellor, and admitted to the cure of souls therein by the bishop of *London*, and legally inducted into the same; that the parishioners of *Saint James's* had not entered into any agreement with the commissioners or others, touching the division of the parish of *Saint John*, for church and poor rates; that the said rates were still made by the officers of the old parish of *Saint James's*, and collected equally through both parishes, although their right so to do without the concurrence of the officers of the parish of *Saint John* was in litigation. He denied, that the ministers of *Saint James's* had constantly and uninterruptedly done and continued to do duty in the district or parish of *Saint John*, such as baptizing children there, and marrying and churching persons residing there, or that they had constantly received fees for the same, for that the defendant's predecessor constantly denied that the minister of the old parish of *Saint James* had any right to do such duty in

SELLON  
against  
PARRY.

in the parish of *Saint John*, or to receive any fees for the same; and that he, ever since he had been rector of *Saint John's*, had constantly denied the plaintiff's right to do such duty. He admitted, that in the year 1729, the right of election or appointment of a curate to the parish of *Saint James's* was litigated; and that it was determined to be in the inhabitants of the parishes of *Saint James's* and *Saint John* paying scot and lot. He also admitted, that the plaintiff was duly elected curate of the said parish of *Saint James's* by the inhabitants of both parishes, they having the right of patronage of the curacy of *Saint James's*. He also admitted, that the plaintiff brought an action against him in the court of king's bench for the recovery of the money received by him for surplice fees, marriages, baptisms, churchings, and burials in the said parish of *Saint John*; that they entered into such agreement; and that such trial was had, &c. and verdict given for ten pounds damages, &c. as stated in the bill, but that he did not agree with him as to all the points. He also admitted, that he had received two letters from the plaintiff to such purport as stated in the bill, but he denied that he had refused to conform to the said agreement so entered into between them, or to comply with the verdict and judgment. He admitted, that he had not desisted from the performance of ministerial offices in the said district or parish of *Saint John*, but had exercised such agreeable, as he apprehended, to the opinion of the court of king's bench, and therefore he insisted that, by so doing, he had not refused to conform to the said agreement, or to comply with the said judgment. He said, that he had never refused to account with the plaintiff for stated surplice fees received by him, and had been always since the said verdict, and was ready and willing to account for and pay to the plaintiff all such surplice fees as could be legally demanded by him, as rector of the said parish of *Saint John*, which he had received for the performance of such ministerial offices in the said parish, and that he had set forth the same in a schedule to his answer, being eleven pounds, sixteen shillings, for burials, marriages, and churchings, and that as to fees for christenings no fee could be legally demanded for the same, baptism being a sacrament. But he insisted, that he, being compellable as rector of the said parish of *Saint John* to do the duty of the same, was not accountable to the plaintiff for any gratuities or presents received by him, for that if the plaintiff, as minister of *Saint James's*, had a right to exercise ministerial functions in the parish of *Saint John*, then he, the defendant, although duly appointed rector pursuant to the last act of the tenth year of *Queen Anne*, was reduced to a nominal rector, and to the hard situation of having the cure of souls, and being compelled to do the duty without receiving any reward or satisfaction for his labour, or even any support or maintenance in his station.

SELLON  
against  
PARRY.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel on the fourteenth day of *December* last, for both parties; and on reading the case for the opinion of the court of king's bench; the cause was adjourned over to this term for the opinion of the court; and now it came on accordingly, when

THE COURT ordered the bill to be dismissed, as far as the same prayed an injunction against the defendant; AND DECLARED, that as there had been no agreement or settlement between the commissioners appointed by the statute, and the persons having the nomination of the perpetual curacy of *Saint James's, Clerkenwell*, the plaintiff ought to enjoy his curacy, and the tithes, dues, and profits thereof, in as ample a manner as if the said act had not been made, or as the former curates of the said parish of *Saint James's* had enjoyed the same; and that he was entitled to all the several fees mentioned in the case, stated for the opinion of the court of king's bench, which had arisen or which should arise within the district called *Saint John's parish*; AND THEREUPON ORDERED the defendant to account for all such tithes, dues, and profits received by him, or by any other person or persons to his use, from the fourteenth day of *May 1771* (the time that the sum of ten pounds, in the pleadings of this cause mentioned was received by the defendant); costs and further directions to be reserved till after report.

SMYTHE, Chief Baron,

ADAMS, Baron.

PERROTT, Baron.

EASTER TERM  
13. GEO. 3.

JACKSON, D. D. against HINDE, D. D.

*Middlesex, 3d May 1773.*

The parish clerk of *Saint Ann's, Westminster*, is not obliged to be a person in holy orders, but may perform the duties of the office, as a lay clerk, either by himself or by deputy; and he is entitled to receive one third of the fees paid for baptisms, churchings, marriages, and burials, in the same manner as the

THE bill stated, that by the statute 30. Car. 2. it was enacted, "That the rector of the parish of *Saint Ann, in Westminster*, with the consent of the burgesses, churchwardens, and other the principal inhabitants thereof, should or might from time to time nominate and appoint one fit person to be clerk of the said parish, to which clerk there should be the like fees, dues, perquisites, and profits allowed as were belonging to the clerk of the parish of *Saint Martin in the Fields*." That according to the list of fees established in the parish of *Saint Martin in the Fields*, the clerk was entitled to one third part of all the fees, perquisites, and profits arising from baptisms, churchings, marriages, and burials, and the rector to the other two thirds parts; that on the fifth of *December 1765*, the plaintiff was duly appointed by the *Bishop of Saint David's*, the then rector of the parish of *Saint Ann, Westminster*, to the clerk of *Saint Martin's in the Fields*, is entitled to receive such fees.

office



office of clerk of the said parish; that the appointment was confirmed by the then *Bishop of London*, within whose diocese the parish is situate; that he had ever since by himself or deputy duly discharged the duties of the said office; that he had received one third of the fees, perquisites, and profits arising from baptisms, churchings, marriages, and burials performed or celebrated in the said parish, until the death of the *Bishop of Saint David's*, which happened on the thirty-first *March 1767*; that some short time afterwards the defendant was instituted and inducted into the said rectory and parish church of *Saint Ann*; that he had ever since officiated in the cure there; that he had received the whole of the fees ever since, without accounting for or satisfying the plaintiff the third part thereof; that he had refused to pay him the same, on a false pretence that he had neglected to assist him in the publick duties of his function as clerk; and that therefore he, the defendant, was not accountable to him for the same. The bill then charged, that the office of clerk of the said parish was a lay office, and might be exercised as well by a layman as by a person in holy orders; and that the said act of parliament does not require the clerk of the said parish to be in holy orders; and insisted, that it was not incumbent on him, as clerk, to assist the rector in the exercise of his function as rector, but that having by himself or his deputy discharged the proper duties of his office, he was entitled to one third part of the said fees. The bill therefore prayed, that the defendant might be decreed to account for one third part of all the fees of baptisms, churchings, marriages, and burials which had been performed within the said parish, since the time of the defendant's being inducted into the said rectory, and pay such sums as should appear due on such account; and that the plaintiff's right, as clerk of the said parish, to one third part of such fees might be established.

JACKSON  
against  
HINDS,

The defendant said, that the clerk of the parish of *Saint Martin* had always been and was at the time of passing the 30. *Car. 2. c. 7.* a person in holy orders, and had constantly, by himself or deputy, performed part of the cure of the parish, as assistant therein to the vicar; that he, the clerk of the parish of *Saint Martin*, was not entitled to one third part of the fees within the said parish, or the vicar thereof, there being no rector, to the other two thirds, but that when a child was christened at church the fee due thereon was divided into thirds, two thirds to the rector of *Saint Ann's*, or the vicar of *Saint Martin's*, and one third to the clerk in orders, but that if the christening was at home, the fee was three shillings and sixpence, of which two shillings and sixpence went to the rector of *Saint Ann's* and vicar of *Saint Martin's*, and one shilling only to the clerk, except when such christening was performed by the rector of *Saint Ann's*, in which case he had been always used

to

JACKSON  
against  
HINDS.

to keep the whole fee; that at *Saint Martin's* if the vicar christened a child at home, and the deputy of the clerk in orders did not attend the same, the vicar accounted for one third of the said fee to the clerk in orders, but that if the deputy of the clerk in orders did attend, the vicar did not account for any part of such fee to the clerk in orders, his deputy in that case always receiving or being presumed to receive from the parent or friends of the child so christened a reasonable gratuity for his attendance; that it had always been customary in the parish of *Saint Ann*, for the rector when he christened a child himself, to take the whole fee for such christening, without accounting for any part thereof to the clerk in orders, that the fees on a marriage, both at *Saint Martin's* and *Saint Ann's*, were and always had been if by licence ten shillings, of which the vicar of *Saint Martin's* and rector of *Saint Ann's* received six shillings, the clerk in orders two shillings, and the sexton two shillings, and if the marriage was by banns the whole fee was seven shillings and sixpence, of which the rector of *Saint Ann's* and the vicar of *Saint Martin's* received four shillings, the clerk in orders two shillings, and the sexton one shilling and sixpence; and if the rector, vicar, clerk in orders, or curate in either parish received more than such common fees, the overplus beyond the common fees before-mentioned, to the clerk in orders and the sexton, belonged to the vicar of *Saint Martin's*, but that at *Saint Ann's*, if the fee for marrying was given to the rector only, it has always had been customary for the rector to pay the clerk in orders and sexton their ordinary and usual fees, and to keep the rest to himself; and that if the fee upon a marriage was paid, or any complement made on that account, both to the rector and to the clerk in orders, then it had always been customary for each to keep what was so given; but that since the plaintiff had refused to attend or do any duty as clerk in orders himself, he, the defendant, had permitted his lay deputy to keep whatever he had received at such marriage, without accounting to the plaintiff, insisting that the defendant should pay or account for the same to the plaintiff out of what the defendant had received for such marriage; that the fees for burials at *Saint Ann's* had been, ever since the defendant had been rector of the parish, received by the sexton, who had given him his fees, and paid, he believed, the clerk in orders, or his deputy his fees; that the clerk in orders at *Saint Martin's* did take one third of the fee for churching of women, the whole fee for which was one shilling and sixpence, of which the vicar took one shilling, and the clerk in orders sixpence; that at the time of passing the said statute the clerk in orders at *Saint Martin's* did not claim any part of that fee; that no part of such fee had ever been claimed by the clerk in orders at *Saint Ann's*; that no parish clerk was entitled to any part of the profits arising from the churching of women, it being an offering,

JACKSON  
against  
HINDE.

offering, and as such personal to the minister; that the fees before-mentioned to be due for marriages and christenings in the said parish of *Saint Ann* were the same, and were divided between the rector and the clerk, in the same proportions as in the parish of *Saint George's, Hanover Square*, where the parish clerk was always in holy orders, and always did one half of all the parochial duty for the rector, preaching without receiving any salary or allowance from the rector on that account; that the plaintiff had not either by himself, or by a sufficient deputy, discharged the duties of his said office, for that about *Lady Day 1767*, he quitted the duties there as clerk in orders, and had only employed a lay person to attend service as a lay parish clerk; that he had before constantly done a part of such duty; that when he stood candidate for such office he, by the printed bills he then distributed, desired "the votes and interest of the then rector, "burgesses, and inhabitants of the said parish, to succeed the "then late clerk in orders;" that it had always been customary for the clerk in orders, both at *Saint Martin's* and *Saint Ann's*, to have a lay deputy to do the common duty of a lay parish clerk; and that he, the plaintiff, did not pay or allow such deputy any salary or stipend for such duty, although he, the plaintiff, did himself appoint such lay deputy; that by reason of the plaintiff's not doing the duties of his office, as clerk in orders, he, the defendant, had been obliged to appoint a curate for the duty, which should have been done by the plaintiff, as clerk in orders of the said parish; that he therefore submitted, that as the plaintiff had not by himself, or his sufficient deputy, duly discharged the duties of the said office of clerk in orders of the said parish from *Lady Day 1767*, he was not, by virtue of the said act of parliament, entitled to receive one third part or any part of the fees as aforesaid, since that time. He further said, that notwithstanding the plaintiff had so neglected the duty of his office, he had constantly received the fees, in the same manner as if he had personally performed such duty, except only that for about two months, he, the defendant, withheld the fees for marriages to the amount of one pound, four shillings; but that he had since caused the same to be tendered to him, and that he had refused to accept the same, and save also that he, the defendant, had not paid or accounted to the plaintiff for the churching or christening fees as aforesaid, as it had always been usual, when the rector christened a child himself, to take the whole fee, without accounting for any part thereof to the clerk in orders; and that the clerk in orders never used to take any part of such christening, but when he christened the child himself, or provided some person to perform such duty for him, and as the plaintiff had never since *Lady Day 1767* officiated at any christening in the said parish, but they had all been performed by him or his curate, he, the defendant, had for that purpose kept the whole of such fees; but he said, that  
if



JACKSON  
against  
HINDS.

if the court should be of opinion that the plaintiff was entitled to any such fees, he was willing and offered to account for the same in such a manner as the Court should direct.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and the cause came on to be heard on the twenty-seventh day of *February* last; and upon hearing counsel on both sides; and reading several proofs in the cause, it was adjourned over for the opinion of the Court; which now coming on accordingly;

THE COURT declared, that the plaintiff, as parish clerk of the parish of *Saint Ann, Westminster*, was entitled to all dues, fees, perquisites, and profits arising within the parish, in the same proportion as the parish clerk of *Saint Martin in the Fields* is entitled to dues, fees, perquisites, and profits, within that parish; AND THEREUPON ORDERED the remembrancer to enquire into and state such proportions to the Court.

The deputy made his report, dated the sixth day of *February* instant; and on the twenty-third of *February* 1775, the report was ratified and confirmed.

THE COURT accordingly ordered the deputy remembrancer to take an account of what was due to the plaintiff for fees, according to the proportions reported due to the clerk of *Saint Martin in the Fields*; and on the twenty-seventh of *April* 1779, the deputy made his report, which report was, on the seventh of *May* following, ratified and confirmed, and the defendant ordered to pay ninety-two pounds, two shillings, and sixpence, for the plaintiff's proportion of the fees of baptisms, churchings, and marriages, with the costs of suit.

EASTER TERM  
13. GEO. 3.

PENNEL against ODLING.

*Lincolnshire, 3d May 1773.*

The rector of *Brigfley*, in *Lincolnshire*, is only entitled to 9d. an acre from the landholders who reside in the parish, and to 10d. an acre from the landholders who do not reside in the parish, in lieu of all tithes, both great and small, arising therein.

THE rector of *Brigfley*, in the county of *Lincoln*, claimed the great and small tithes of the parish in kind; and stated, that the defendant *Odling*, and others, of the parish of *Brigfley*, the defendant *Parkinson* of *Hoghton le Clay*, *J. Bacon* of *Bondy*, and *J. Curtis* of *Afby*, in the said county, had since his appointment in *September* 1768 held and occupied in the parish of *Brigfley* various lands, on which had arisen the several titheable matters stated in the bill, and for the tithes of which he prayed the Court would decree them respectively to account.

The defendants insisted, FIRST, that all the occupiers of lands residing in the parish had been accustomed to pay to the rector yearly at the feast of *Saint Michael* ninepence an acre in

in lieu of all the tithes arising out of such lands; and that the rectors had constantly and invariably accepted the said *modus*, in full satisfaction of all the said tithes. SECONDLY, that all occupiers of lands, not residing in the parish, had paid tenpence an acre, in full satisfaction of all tithes arising therein; that the rector for the time being had constantly and invariably accepted the said *modus*, in full satisfaction for all the last-mentioned tithes.

PENNELL  
against  
Osburn.

THE COURT directed a trial at law upon the following issues;

FIRST, Whether for and during the time whereof the memory of man is not to the contrary, all occupiers of lands and grounds in the parish or rectory of *Brigfley*, in the county of *Lincoln*, residing in the same parish, for the time being, have been used and accustomed to pay to the rector of the said parish or rectory of *Brigfley*, for the time being, his farmers or tenants thereof, yearly at the feast of *Saint Michael*, or whenever after that feast the said rector, his farmers, tenants, or agents should require, the sum of ninepence an acre, for every acre of the said lands or grounds, in full compensation, satisfaction, and discharge of and for all tithes whatsoever arising, growing, renewing, or happening in, out, of, or upon the said lands and grounds in each respective year."

SECONDLY, " And whether for and during all the time whereof the memory of man is not to the contrary, all occupiers of lands and grounds in the parish or rectory of *Brigfley*, in the county of *Lincoln*, not residing in the same parish, for the time being, have been used and accustomed to pay to the rector of the said rectory or parish of *Brigfley*, for the time being, his farmers, or tenants thereof, at the feast of *Saint Michael the Archangel*, or whenever after that feast the said rector, his farmer, tenants, or agents should require the same, the sum of tenpence an acre, for every acre of the said lands or grounds, in full compensation, satisfaction, and discharge of and for all tithes arising, growing, renewing, or happening in, out of, or upon the said lands and grounds, in each respective year." The defendants in equity to be plaintiffs at law, with the usual directions.

By an order, dated the fourteenth of *December* 1773, the issues were ordered to be taken *pro confesso*, as against the plaintiff *Pennell*, he having declined to try the same.

The cause came on the third of *February* 1774, when

THE COURT ordered the bill to be dismissed with costs.

SMYTHE, *Chief Baron*.

ADAMS, *Baron*.

PERROTT, *Baron*.

SMITH

EASTER TERM,  
13. GEO. 3.

SMITH *against* PRICE.

*Dorsetshire, 6th May 1773.*

The rector of *Stoke Abbot's*, in *Dorsetshire*, is only entitled to 8d. a milch cow and to 4d. a heifer, every year at *Easter*, in lieu of the tithe milk and calves of such cow and heifer.

THE plaintiff, as owner and occupier of lands in the parish of *Stoke Abbot's*, in the county of *Dorset*, on behalf of himself, and all the other owners and occupiers of land therein, filed his bill against the rector thereof, stating that *Stoke Abbot's* was a rectory within the deanery of *Bridport*, and diocese of *Bristol*; that there was within the said parish an immemorial custom for the occupiers of land to pay the rector thereof, at *Easter* in every year, eightpence for every milch cow by them kept and depastured on their lands therein, in lieu of the tithe milk and calves of every such cow; that there was also another like custom, for the occupiers to pay to the rector at *Easter* yearly fourpence for every milch heifer by them kept, fed, and depastured on their lands in the said parish, in lieu of the tithe of milk and calves of every such heifer; that *J. Phillips*, a rector of the parish, had exhibited his bill in this court against *Symes* and others, occupiers of lands therein, to compel them to set out and pay the tithe of milk and calves in kind; that the defendants insisted on the afore said several *modus*es, and filed their cross bill to establish the same; and on the hearing of the said causes, the Court dismissed with costs so much of *Phillips's* bill as related to the said *modus*es, and decreed them to be established (a); that the succeeding rectors and their lessees had ever since acquiesced in the said decree; but that the defendant now refused to accept of them, and insisted, that the tithes of cows and heifers ought to have been paid in kind. The bill then charged, that the said *modus*es extended to and included the tithes of calves, of cows, and of heifers, as well as their milk, and had from time immemorial been paid to and accepted by every rector of the said parish, in lieu thereof, and prayed they might be established.

The defendant admitted, that there had been such ancient *modus*es; and said, that he had never refused to accept of them; but that the bill he had filed against the plaintiff was intended to recover the tithes of wool, lambs, depasturage of sheep, and other titheable matters, and that through mistake cows, heifers, and calves were inserted therein; and he disclaimed any right or title to the tithes of milk and calves in kind.

THE COURT accordingly ordered the defendant to accept from the occupiers of lands in the parish of *Stoke Abbot's*, at *Easter* yearly, the several *modus*es of eightpence and fourpence as above stated, in lieu of the tithe of milk and calves of every milch cow and

(a) Vol. 2. page 228.

heifer;



heifer; to be restrained for the future from proceeding against the plaintiff for the tithes in kind of such milch cows and heifers, and to pay the plaintiff his costs.

SMITH  
against  
PRICE.

THE COURT FULL.

CLEEVES against KNYFTON.

EASTER TERM  
13. GEO. 3.

*Somersetshire, 17th May 1773.*

THE plaintiff, on behalf of himself and of all other the owners and occupiers of land in the parish of *Saint Decumans*, in the county of *Somerset*, filed his bill against the defendant as vicar of the said parish, to establish the following *modus*: FIRST, a *modus* of twopence for every cow, payable at *Easter*, in lieu of the tithe of milk; SECONDLY, a *modus* of sixpence, payable at *Easter*, for every calf fallen and sold or killed within the parish; THIRDLY, a *modus* of one halfpenny, payable as afore said, for every calf fallen and sold, and killed, or reared in the parish, for and in lieu of the tithes of calves fallen and reared therein respectively; FOURTHLY, a *modus* of one penny at *Easter*, for every ancient garden or gardens, whether the owner had or held in his occupation one or more garden or gardens, in lieu of the tithes of all garden stuff yearly arising in such garden or gardens; FIFTHLY, a *modus* of one penny for every acre of grass cut and mowed by every owner and occupier of land in the parish, in the first year after the tillage of the said land, payable at *Easter* yearly, in lieu of the tithes of hay arising in and upon the said lands in the first year after the tillage thereof.

The vicar of the parish of *Saint Decumans*, in *Somersetshire*, is only entitled to certain *modus* in lieu of the tithes of milk, calves, ancient gardens, and grass cut the first year after the tillage.

The defendant denied, that there were any such *modus* as were charged in the bill, in lieu of the tithes of milk or calves, but he admitted the *modus* of one penny for every ancient garden, and one penny for every acre of grass cut and mowed in the first year after the tillage; but he submitted it to the Court, that the said *modus* last mentioned was not good or valid in law.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and now upon hearing counsel; and reading the terrier of the parish produced from the episcopal court of *Bath and Wells*, and the several proofs taken in the cause.

THE COURT, in regard the defendant had declined to try the validity of the several *modus* in a feigned action at law, ORDERED, that they be established; that he, the defendant, do accept the same for the future; that an injunction do issue to restrain him from proceeding against the plaintiff in the spiritual court for recovering the tithes in kind, or the value thereof for

CLEVES  
against  
KNYFTON.

for such matters respectively, for which such several *modus*es are due and payable as aforesaid; and that he do pay the plaintiff his costs.

THE COURT FULL.

TRIN. TERM,  
13. GEO. 3.

PIPER against CHAPMAN.

Yorkshire, 13th July 1773.

The rector of  
*South Kilvington*,  
in *Yorkshire*,  
claims the tithes  
of *the Park*  
*Farms*, in kind;

denies that any  
*modus* is payable  
in lieu thereof;

and says, that in  
the year 1681,  
the tithes thereof  
were compounded  
for;

that in the year  
1723, the tithes  
of *the Park Farms*  
were compounded  
for at 4l. a-  
year;

that at *Martin-*  
*mas* 1767, he re-  
fused to conti-  
nue the said  
composition;

THE rector of *South Kilvington*, in the county of *York*, claimed all manner of tithes arising therein, and stated, that the defendant *Hodgson* and others, as tenants of the defendant *Chapman*, had occupied several farms in the parishes during the year 1769; that they had had corn, grain, hay, oats, barley, big, beans, pease, and other titheable matters thereon, the tithes of which they had refused to pay on a pretence that the said farms were park farms, and that a *modus* was payable in lieu of the tithes thereof. The bill then denied, that any *modus* existed in lieu of tithes of *the Park* or lands; and stated, that in the year 1681 *Lord Dunbar* was then owner of *the Park Farms*; that the said farms now were the estate of the defendant *Chapman*; that in the said year he had compounded with the then rector of the parish to pay yearly twenty-three pounds for all tithes in the township of *Upsall* and *Upsall Park*, by half-yearly payments at *May Day* and *Martinmas*; that the said composition had been paid during the course of several years to the rector; that in the year 1714, all the tenants and occupiers of lands in the said township, except the tenants of *the Park Farms*, paid to the then rector, and did then pay to him the plaintiff, their tithes in kind, or compositions in lieu thereof. That a new separate agreement had been made between the owner and occupiers of *the Park Farms*, and the then rector, for the payment of three pounds, six shillings, and eightpence, in lieu of all tithes for *the Park Farms*; that the said agreement had been continued until the year 1723; that *Mr. Constable*, the then owner of the said township and *the Park Farms*, then came to a new agreement with the then rector to pay him four pounds yearly, by four quarterly payments, in full of such tithes; that the said sum had since 1723 been agreed to be paid to the then rector, and to the succeeding rectors; that he, the plaintiff, since his induction, had agreed to accept of, and had ever since yearly accepted such payment until *Martinmas* 1767; that he had since that time refused to accept of the same, or to make a new agreement, except at an improved value, the tithes being due to him in kind; that the defendant *Chapman* had advanced the rent of *the Park Farms*; that the tithes thereof were worth, to be compounded for, a much greater sum; that the lands were

were not exempt by any *modus* whatsoever; that the said pretended payment of four pounds a-year, in lieu of all tithes, was too rank as a *modus*, because forty-six years ago it was the full value of the tithes, in case they had been paid in kind. The bill then charged, that the defendant *Chapman* had in his custody divers deeds and writings, shewing that tithes were payable in kind; that the said composition, agreed to be paid in lieu of tithes of *the Park Farms*, had varied as the parties could agree; and that the same also appeared from various old rentals and receipts in his custody. The bill further charged, that the defendant *Hodgson* and others had, in the year 1769, substracted their whole tithes. The bill also charged, "that by custom used and approved in the rectory and parish, and the limits and the titheable places thereof, for time whereof the memory of man was not to the contrary, the occupiers of lands within the same rectory and parish were bound to set out in shocks, ricks, and cocks the tithe of all wheat, messin, oats, barley, big, beans, pease, and hay grown, reaped, and gathered in or upon their lands within the same parish; and that the rector of the said parish, his tenant, or tithe-gatherer was not bound to accept or take away such tithe until the same were reaped and mowed, and set out in shocks, ricks, and cocks as aforesaid." The bill therefore prayed, that the defendants might set forth a true account of the quantities, qualities, and values of their respective farms and lands, and of the tithes which had arisen therefrom, and the value of the several articles which they had respectively reaped thereon in the year 1769; that the plaintiff's right to the payment in kind of the said tithes of corn, grain, and hay might be established; and that the defendant *Hodgson* and others might severally be decreed to account for all the tithes of corn, grain, and hay respectively due from them for the said years, and severally pay the single values of such tithes to the plaintiff.

The defendant *Chapman* said, that there was anciently, and then was within the hamlet of *Upsall*, in the parish of *South Kilvington*, a large parcel of land containing five hundred and eighty acres, called *Upsall Park*, or *the Park Lands*; and "that one buck in the summer season, and one doe in the winter season on demand, and also grafs or pasture for one gelding or mare for a year were payable and given to the rector, in some part of *Upsall Park*, as a *modus*, in lieu of all the tithes arising on the *Park* or *the Park Lands* and each part thereof;" that the said *modus* or a sum of money in lieu thereof had been accordingly, for time immemorial, paid to and accepted by the rector, until the year 1768, when the plaintiff first refused to accept the same; that no tithes whatsoever arising from *the Park Lands* had ever been paid in kind, or any composition in lieu thereof, other than the said *modus*; that the

Vol. III.

G g

said

PIPER  
against  
CHAPMAN.

that the said 4l. was rank as a *modus*. that the owner had the deeds in his custody;

that by the custom of the parish the corn tithes ought to be set out in shocks, ricks, and cocks.

The defendant says, that the *Park Farms* lie in the hamlet of *Upsall*, in *South Kilvington*; that there is a *modus* to pay a buck in summer and a doe in winter, and to give the rector the run of a gelding in lieu of the tithes thereof;



PIPER  
against  
CHAPMAN.  
that the said *modus* had been compounded for at 3l. 6s. 8d. a-year; that in the year 1590, the *Park* was divided into several farms; that the said *modus* had been paid for the said farms; that the rector, who had brought actions for the recovery of tithes in kind, had been non-suited; that in one case the jury had found a special verdict in favour of the said *modus*;

that the same had been commuted at 3l. 6s. 8d. a year, and afterwards at 4l. a-year.

said *modus* had been compounded for at three pounds, six shillings, and eightpence a year; that the same had for several years been paid in lieu of the said *modus*; that the *Park* was in the year 1590 divided into several farms, and had ever since been occupied as separate farms; that the said *modus* had been paid and accepted in lieu of the tithes of such farms, until the year 1768, when the plaintiff refused to accept of the same; and that the defendant had always been ready to pay the arrears of the said *modus*, at four pounds a-year. The defendant then further stated, that he had several paper writings purporting to be copies of proceedings in actions brought for the recovery of the tithes of the *Park Farms*; that one of them was an action of debt, on 2. and 3. *Edw. 6.* brought in *Trinity Term*, in the eighteenth year of *James the First*, by *J. Bramhall*, then rector of *South Kilvington*, against *G. Wood*, then occupier of part of the lands theretofore called *Upsall Park*, for not rendering to the plaintiff, as rector, tithes in kind; that on the trial thereof the plaintiff was nonsuited on the merits, and judgment thereon given against him; that another such action was brought in *Hilary Term*, in the twelfth year of *Charles the First*, by *E. Thursby*, then rector, against *J. Wood*, then occupier of part of the said lands; that on the trial thereof, the jury found a special verdict, "That the rector of *South Kilvington* had immemorially received yearly "in summer one buck, and in the winter one doe, of the owner "of the *Park Lands*, and also one *horse grass* yearly in the said "lands, as a *modus* in lieu of all tithes whatsoever thereof." The defendant then further stated, that in 1723, *Mr. Constable* was seised in fee of the said manor and lands of *Upsall Park*; that *W. Chambre* was rector of *South Kilvington*; that for several years before, and to that time, the yearly sum of three pounds, six shillings, and eightpence, in money, in lieu of the said *modus*, had been paid and accepted; that *Mr. Chambre* did not then think the same fully sufficient; that *Mr. Constable*, on the twenty-ninth of *August* 1723, entered into an agreement, as stated in the answer, to pay annually the sum of four pounds; and that the said *modus* of four pounds was at that time the full value of the said *modus*.

The occupiers of the *Park Farms* insist on the *modus*, and deny that by the custom of the parish they were bound to set out the tithes of grain in shocks, ricks, and cocks.

The defendant *Hodgson* and others admitted, that they were tenants to *Chapman*; and that they occupied the *Park Lands* in separate farms: and they set forth the quantity that each of them held; and said, that they were let to them tithe free; that they had reaped therefrom corn and hay, and had carried the same away without setting out the tithes thereof, for that the said *modus*, as had been insisted on by the defendant *Chapman*, was payable in lieu of the same: and they denied that, by any custom of the parish, the occupiers were bound to set out the tithes of grain in shocks, ricks, and cocks.

The

The plaintiff replied ; the defendant rejoined ; and witnesses were examined on both sides ; but before the cause was heard, the defendant *Chapman* died, and the proceedings were duly revived ; when upon hearing counsel for all parties ; and reading the deposition of *J. Briggs* to the second and third interrogatories ; and also the defendant *Chapman's* answer ; and on full debate ;

PIPER  
against  
CHAPMAN.

The cause  
heard.

THE COURT ordered a trial at law on the following issue, to try,  
“ Whether, from the time whereof the memory of man is not  
“ to the contrary, there hath been paid and payable, and ought  
“ to be paid to the rector of the parish of *South Kilvington*,  
“ in the county of *York*, for the time being, his farmer, tenant,  
“ or tithe-gatherer there, by the owner of the lands or grounds  
“ heretofore called or known by the name of *Upsall Park*  
“ for the time being, yearly, one buck in the summer season and  
“ one doe in the winter season, on demand, and also grafs  
“ or pasture for one gelding or mare of such rector, or of his  
“ farmer, in or upon the same lands, or some part thereof, for  
“ all the year, for and as a *modus* or ancient customary payment  
“ in lieu and satisfaction of all the tithes and tenths whatsoever  
“ yearly coming, growing, arising, or renewing of, from, or  
“ upon the said lands and grounds heretofore called or known  
“ by the name of *Upsall Park*, and now by the name of *the Park*  
“ or *Park Lands*, and each part thereof :” the plaintiff in this suit  
to be defendant in the action ; the trial to be by a special jury ;  
the judge to indorse, &c. ; and further directions to be reserved  
till after the trial had.

An issue direct-  
ed to try the  
*modus*.

The issue was accordingly tried by a special jury, and a verdict was found for the plaintiffs at law.

The jury find  
in favour of the  
*modus*.

The cause came on to be further heard upon the *posse* on the eighth of *July* 1774 ; when, on hearing counsel on both sides,

The cause fur-  
ther heard.

THE COURT ordered the bill to be dismissed with costs both at law and in equity.

The bill dis-  
missed with  
costs.

SMYTHE, *Chief Baron*.

PERROTT, *Baron*.

EYRE, *Baron*.

BURLAND, *Baron*.

### MORGAN against WILLIAMS.

*Radnorshire*, 14th *July* 1773.

TRIN. TER ,  
13. GEO. 3.

THE bill stated, that the plaintiff was duly collated and instituted into the prebend of *Llanfanchrede*, in the collegiate church of *Brecon*, in the diocese of *Saint David's*, in *Radnor*, only entitled to the sum of 21. 6s. 8d. a-year from the vicar of the parish, and not to two-thirds of the vicarial tithes.

The prebendary  
of the prebend  
of *Llanfanchrede*,  
in *Radnorshire*, is

MORGAN  
against  
WILLIAMS,

and still was prebendary thereof, and entitled to all the profits belonging thereto, and particularly to receive from the vicar of the said parish yearly two third parts of the value of the vicarial tithes; and that the defendant, as vicar, had received and withheld the same.

The defendant admitted, that the plaintiff was, in the year 1757, duly collated and instituted to the said prebend, and had ever since continued the prebendary thereof; but denied, that he had any right to two-third parts of the vicarial tithes arising in the parish; and insisted, that he was only entitled to receive from him yearly one pound, six shillings, and eightpence, pursuant to a settlement in the twenty-sixth year of *Henry the Eighth*; and that the said sum had never since been legally augmented or increased. He admitted, that he had been vicar of the parish ever since the year 1733; and said, that soon after his induction he had paid the plaintiff's predecessor sixteen pounds, being informed, that he was entitled to that sum as an annual payment from the vicar; and that he continued such yearly payment for some time, until he found that he had paid it in his own wrong.

The plaintiff replied; the defendant rejoined; and no witnesses were examined on either side; and now upon hearing counsel on both sides; and reading an order to prove exhibits, &c.; and the following evidence, taken from the book of valuation of livings in the first fruits office, viz. "*Menevensis Decanatus de Elwayl Llanfanfreed; Prebendarius ibidem 26s. 8d. Communibus Annis Llanfanfreed David Apreece, Vicarius, Diœe Prebend Percipit Annuatim 114s. 9d.*;" also a certificate of the *Bishop of Saint David's*, made on the return of livings in the sixth and seventh years of *Queen Anne*, viz. "*Deanery of Elwayl Llanfanfreed, vicar, forty pounds;*" and upon full debate of the matter;

THE COURT dismissed the bill with costs.

MICH. TERM,  
13. GEO. 3.

HAWKINS against CHANNON.

Dorsetshire, 10th December 1773.

The vicar of *Whitechurch Canon-*  
*nicorum*, in  
*Dorsetshire*,  
claims the small  
tithes of the chap-  
el of *Stanton*  
*Saint Gabriel*,  
except those for  
which the fol-  
lowing *modus* are payable, viz. 6d. a cow, by the owners of land occupying the same; 1d. a colt;  
4d. an orchard, by occupiers, whether owners or not; and 1d. for a garden.

THE vicar of *Whitechurch Canon-*  
*nicorum*, together with the  
chapelries of *Chidcock*, *Marshwood*, and *Stanton Saint Ga-*  
*briel*, in the county of *Dorset*, annexed, claimed the small tithes  
of the said vicarage and chapelries, except those for which ancient  
*modus* were payable, viz. sixpence a milch cow from the owners  
of land who occupied the same, in lieu of the tithes of milk and  
calves; one penny for the fall of every colt; fourpence for every  
orchard from occupiers, whether owners thereof or not, in lieu  
of



of the tithe fruit ; and one penny for every garden, in lieu of the tithe of roots, herbs, fruit, and other things growing therein ; and stated, that the defendant had occupied divers lands, gardens, and orchards, in the chapelry of *Stanton Saint Gabriel*, on which he had had cows, bullocks, sheep, milk, wool, calves, lambs, colts, pigs, eggs, poultry, pigeons, honey, and other titheable matters ; that he had paid him a composition, in lieu of the tithes thereof, to *Easter* 1766, but from that time had wholly omitted so to do. The bill therefore prayed an account and payment thereof.

HAWKINS  
against  
CHANNON.

The defendant, as to so much of the bill as sought an account for the tithes of milk, calves, and colts, PLEADED, that he was owner of all the lands which he occupied in the said chapelry, in such manner as to be entitled to the benefit of the *modus* in the bill set forth to be payable by the owners of lands in lieu of the tithes of milk, calves, and colts ; that he was ready to prove the same ; and that he ought not to make any further or other answer to so much of the said bill. By his answer he admitted, that he had paid a composition in lieu of his small tithes for one year ending at *Easter* 1766, and said, that it included the *modus* for milk, calves, colts, orchards, and gardens, and was in full of all small tithes and *modus* to that time ; and he set forth the land, orchards, and gardens he held, and the titheable matters he had thereon, with the value thereof, to *Easter* 1771, being eleven pounds, nine shillings, including the *modus*.

The defendant says, that he occupies *Stonebarrow Farm*, in the said chapelry, and holds the same for the residue of a term determinable upon three lives ; and that therefore he is such an owner of lands in the parish as brings him within the exception as to the payment of tithes for milk, calves, and colts.

The plea was argued ; and on full debate thereof it was ordered to stand for an answer, with liberty for the plaintiff to except thereto, which he did ; and the defendant submitted to the same, and the plaintiff thereupon amended his bill.

The defendant, by his further answer, said, that he had not, since *Easter* 1776, occupied any lands, gardens, or orchards in *Stanton Saint Gabriel*, except what he was owner of ; that the said lands were called *Stonebarrow Farm* ; that he held the same on lease, dated the first of *January* 1746, for the remainder of a term of ninety-nine years, determinable on three lives, at twenty-five pounds a-year : and he insisted, that as he held them under such lease, he was an owner of lands in the said parish within the true meaning of the custom by virtue whereof the *modus* in the said bill mentioned had been payable.

Further answer.

The plaintiff replied ; the defendant rejoined ; and witnesses were examined on both sides ; and upon hearing counsel on both sides ; and reading the several proofs in the cause ; and a lease dated the first of *January* 1746, from *Robert Henley* to *D. Channon* ; and on full debate ;

The cause heard.

HAWKINS  
against  
CHANNON.

The bill dismissed as to the tithes of milk, calves, and colts, and decreed as to orchards, gardens, and other small tithes.

THE COURT ordered the bill, so far as the same related to the demand of tithes in kind of milk, calves, and colts, to be dismissed with costs; and the deputy remembrancer to take an account of what was due for the tithes of wool, lambs, pigs, eggs, poultry, pigeons, and honey; and also the several *modus*es for orchards and gardens; and in the taking the account, to enquire and state in his report what sum of money was due to the plaintiff from the defendant at *Easter* 1771, being the time mentioned in the answer to which the defendant had made an offer to pay eleven pounds, nine shillings, for the value of all his tithes of wool, lambs, pigs, eggs, poultry, pigeons, honey, and *modus*es due at that time: costs and further directions to be reserved till after the report.

THE COURT FULL.

MICH. TERM,  
14. GEO. 3.

BICKERTON against CHENNEL.

Surry, 14th December 1773.

The rector of *Ewbury*, in *Surry*, claims the tithes of *Coverwood Farm* in kind.

THE bill stated, that the plaintiff, about the third of *September* 1755, was duly instituted and inducted into the rectory of *Ewbury*, in the county of *Surry*, and had thereby become entitled to all tithes, both great and small, arising therein, and also to *Easter offerings* for each person of age to communicate; that the said tithes and offerings were yearly payable at *Easter*; that the defendant had, for several years past, been an inhabitant of the parish, and had occupied *Coverwood Farm*, consisting of arable, meadow, pasture, wood, and coppice ground, at fifty pounds a-year; that he had, for two years past, grown thereon wheat, barley, oats, pease, beans, and hay; that he also kept thereon cows, sheep, sows, calves, lambs, pigs, bullocks, geese, ducks, and other poultry; that he had also had thereon apples, pears, plumbs, and other fruits; that he had also agisted thereon sheep, horses, cows, and other cattle, belonging to himself and to other persons; the tithes of all which several matters he ought to been paid to the plaintiff in kind; but which he had, under various vexatious pretences, neglected and refused to do. The bill therefore prayed an account and payment thereof.

The defendant says, that the wood of *Coverwood Farm* is tithes free; and that he had set out his other tithes pursuant to the notice given him by the plaintiff.

The defendant admitted, that he occupied *Coverwood Farm* at forty-four pounds *per annum*, and that he had thereon the matters stated in the bill; but he said, that he was under a composition with the plaintiff for the tithes thereof; that he had given him the following notice: "*Thomas Chennell*, Take notice, "I, *Edward Bickerton*, rector of *Ewbury*, in the county of " *Surry*, by myself or agent, shall take up the tithes in kind " throughout the parish of my said rectory of *Ewbury* for the " current year, and no longer abide by the former yearly " composition entered into by me with several of my parishioners " or

" or occupiers of lands in my said parish. Given under my hand this fourteenth of *December* 1767. EDWARD BICKERTON ;" that afterwards he, the defendant, duly set forth the tithes of his titheable matters, except of wood, for that the said farm was exempt from payment of tithe wood ; and that the same had never been demanded before.

BICKERTON  
against  
CHENNEL.

The plaintiff replied ; the defendant rejoined ; and witnesses were examined on both sides ; and upon hearing of counsel ;

The cause heard.

THE COURT ordered the defendant to pay one pound, two shillings, and threepence for the tithes of calves, milk, *Easter offerings*, and sheep, without costs ; and the bill to be dismissed as to all the other matters without costs, except only as to the tithes of corn and hay from *Michaelmas* 1767 to *Michaelmas* 1768, for which the Court retained the bill for a year, with liberty for the plaintiff to bring his action for subtraction of those tithes for that time,

The tithes of calves, milk, and sheep, and *Easter offerings*, decreed.  
The bill retained for a year as to corn and hay from *Michaelmas* 1767 ; and as to other tithes dismissed.

#### HASTINGS against TOON.

*Leicestershire*, 23d February 1774.

HILARY TERM  
14. GEO. 3.

THE vicar of *Belton*, in the county of *Leicester*, claimed all tithes of hay, wool, lambs, turnips, and other vicarial tithes, arising therein ; and stated, that the defendant *Sutton* had, ever since the year 1763, been owner and occupier of *the Two Middle Closes*, *the Two Sheep Fields*, *the Flatt*, *the Goffy Close*, and *Muggiston's Close* ; and also of several parcels of lands lying in *the Forest of Charnwood*, in the said parish ; that the defendant *Toon* had also been owner and occupier of several closes therein, and in the said forest ; that the defendant *Gibbon* had occupied several closes in the said places ; that in each year since the plaintiff's institution in the year 1763 they had respectively mowed hay, fed barren and unprofitable cattle, kept sheep which had produced lambs and wool, grown turnips, and had calves, cocks, hens, milk, eggs, apples, and divers other titheable matters, the tithes of all which they had refused to pay, under pretence that their lands were parcel of *Merrial Grange* ; but that although the said lands might be parcel of the said grange, yet that they were not, on that account, exempt from the payment of tithes, because the monastery of *Grace Dieu*, to which it was pretended *Merrial Grange* belonged, was one of the lesser monasteries, and therefore could not be legally entitled to any such exemption. The bill then insisted, that the owners of the impropriate rectory were only entitled to the tithes of corn and grain ; that although *the Three New Closes* were formerly woodland, yet that they being now cleared, tithes were due for the same ; and that he, the plaintiff, had actually received tithes in kind of *Rothery's Close*, which was

The vicar of *Belton*, in *Leicestershire*, claims the tithes of hay and all small tithes arising on certain fields parcel of *Merrial Grange*, on *the Three New Closes* that were formerly woodlands, and on certain lands in *Charnwood Forest*.



HASTINGS  
against  
TOON.

formerly woodland, but had been lately cleared. The bill therefore prayed, that the defendants *Sutton, Toon, and Gibbons*, might be decreed to account for the *single value* of the tithes so by them respectively substracted.

The defendants  
*Toon* and *Sutton*  
deny that the  
plaintiff is enti-  
tled to the said  
tithes.

The defendants *Toon* and *Sutton* denied, that the plaintiff was entitled, either by endowment or prescription, to all tithes of hay, wool, lambs, turnips, and other small tithes, from the lands and grounds in the bill mentioned; and said, that the rectory of *Belton* was an impropriate rectory; that the defendant *Keek* and others, or some of them, were the rectors thereof, and, as such, entitled to all the tithes arising in the parish, except as to such parts thereof as were exempt from the payment of tithes.

*Toon* admits oc-  
cupation.

The defendant *Toon* admitted, that he had, for several years past, been owner and occupier of several closes of land situate in the parish.

*Sutton* admits  
occupation.

The defendant *Sutton* also said, that he had, for many years past, been owner and occupier of several closes of land therein, and also of several parcels of land lying in the *Forest of Charnwood*, and in the open fields of the parish.

And they insist,  
that the lands  
they occupy are  
parcel of *Mer-  
rial Grange*;  
that *Merrial  
Grange* was for-  
merly parcel of  
the monastery of  
*Grace Dieu*;  
and that they  
are therefore  
tithable;

The defendants then said, that the monastery, religious house, or priory of *Grace Dieu*, in the said county, was an ancient monastery, religious house, or priory, and was one of the religious houses dissolved in the reign of *Henry the Eighth*; that the said monastery, religious house, or priory, and the site thereof, and all the possessions, lands, tenements, and hereditaments thereto belonging, were, by act of parliament, given to or vested in the said king, in as full and ample manner as the prioress or convent had held and enjoyed the same; that there was, and for time immemorial had been, in the said parish, an ancient grange, called *Merrial Grange*, consisting of many pastures, grounds, and other hereditaments there; that the said grange, with its appurtenances, long before, and also at the time of the dissolution of the said monastery, was parcel of the possessions thereof, and, as such, became vested in *Henry the Eighth*, in such manner as aforesaid; that the said grange, with all the lands and grounds thereto belonging, or parcel thereof, were long before, and also at the time of the dissolution of the said monastery, and also from time whereof the memory of man was not to the contrary, by some legal and sufficient ways and means, discharged from the payment of any tithes whatsoever arising from the said grange, or any of the lands, tenements, or grounds thereto belonging; that the same had been all along held and enjoyed accordingly; that the said grange heretofore consisted of divers large parcels of open grounds and pastures, which had since been inclosed, whereby the names had been altered and new names given, but that the boundaries thereof were well known; that

that all the lands and grounds so occupied by them were, and for time immemorial had been, parcel of *Merrial Grange*, except ten acres belonging to the defendant *Sutton* which lay in the *Open Fields* of the parish; that all the lands so occupied by them in *Merrial Grange* were discharged from the payment of any tithes in kind to the vicar of the parish; that no tithes had ever been paid for the produce thereof, or of any part thereof; and they set forth their titheable matters and things; and admitted, that they had not paid any tithes thereof.

HASTINGS  
against  
TOON.

that *Sutton* occupied ten acres, no parcel of the said grange.

The defendant *Toon* further said, that he knew not whether the monastery of *Grace Dieu* was or was not one of the lesser monasteries that were dissolved by *Henry the Eighth*, and therefore referred to the statutes made for that purpose.

*Toon* refers to the statute 27. Hen. 8. c. 28. and 31. Hen. 8. c. 13.

The defendant *Gibbons* admitted, that he had occupied the *Three Closes* in the parish; but denied, that he had any land in the *Forest of Charnwood*; and he said, that he believed that the same was an extra-parochial place, commonable at all times of the year to the inhabitants of the several parishes that lie contiguous; and he set forth the titheable matters which he had fed on the said closes. He admitted, that he had mowed clover on the *New Close*, and carried the same away, without setting out the tithe thereof; and said, that no tithe in kind had ever been paid for the said closes within time of memory, or even demanded, except by the plaintiff; and he set forth the other lands which he rented in the *Open Fields*, and also the *Three Pieces of Inclosed Lands*, together with the *Three Closes*; and said, that they had been occupied together as long as any person could remember; and insisted, that the occupier thereof had, for time immemorial, paid to the vicar of *Belton* six shillings and eightpence yearly, at *Christmas*, in lieu of the tithe of the hay of the said lands and closes in every year in which they had produced hay. He also set forth an account of the lambs and wool which he had from the sheep depastured on the said lands; and said, that during the winter the sheep were fed in the said closes, and in the summer in the forest; that part of the said lambs were yeaned, and the whole of the wool was shorn upon the forest; but that the greater part of the lambs were yeaned in the *New Closes*; and he insisted, that there had been, for time immemorial, a constant usage to pay the vicar for sheep so depastured and shorn one half of the tithe of the wool in kind, or one twentieth part of the money arising from the sale of such wool at the election of the vicar; and for the lambs so yeaned one twentieth of the value of such lambs, in full for the tithes thereof. He also set forth an account of the number of the cows, calves, hens, and cocks which he had had during four years past; and said, that there was an immemorial custom of three halfpence paid annually for each cow having a calf, in lieu of the tithe milk and calf of each cow; two eggs at *Easter* for every hen,

The defendant *Gibbons* admits, that he occupies the *Three Closes*; but denies, that he holds any land in the *Forest*; and says, that it is extra-parochial and common at all times of the year;

insists on a modus of 6s. 8d. a year in lieu of tithe hay of the *Three Closes* and other lands;

another modus of half the tithe wool, or the twentieth part of its produce, in lieu of the tithe of sheep and lambs;

1½d. a cow;

five eggs for cocks and hens;

HASTINGS  
against  
TOON.

that he had paid  
the *modus* of 6s.  
3d. for the year  
1763,

and had tender-  
ed his tithes ac-  
cording to the  
*modus*es.

and three eggs for every cock, yearly, in lieu of the tithes of cocks and hens; and he denied that he had, during the said years, any other poultry. He said, that he had paid the plaintiff, for the year 1763, the said *modus* of six shillings and eightpence, and also the tithes for the wool, lambs, milk, calves, cocks, and hens, after the rates aforesaid; but that he did not take any receipt for the same, because it was not usual to give any. He said, that he had been always ready and willing, and had offered to pay the plaintiff after the said rates for the following years; but that he had refused to accept the same, and had insisted on tithes in kind, except with respect to cocks and hens, the customary payment for which the plaintiff had accepted up to *Easter* last inclusive: and he denied, that *the New Closes* had ever been, to his knowledge or belief, woodland.

The defendant  
*Platt* claims an  
undivided moi-  
ety of the great  
tithes.

The defendant *H. Platt* and others claimed to be entitled to one undivided moiety or half part of the rectory, and of all tithes of corn, grain, and other great or predial tithes, yearly arising in the parish.

The defendant  
*Keck* the other  
moiety.

The defendant *A. Keck* and others claimed also to be entitled to the other moiety or half part of the rectory aforesaid.

And they admit,  
that the vicar is  
entitled to the  
tithes he claims,  
except in the  
ten acres in the  
*Open Fields*;  
and deny that  
*Merrial Grange*  
is tithe free.

The said defendants admitted, that the plaintiff was vicar of *Belton*, and, as such, was entitled, by some ancient usage, endowment, or prescription, to the tithes of hay, wool, lambs, and all the vicarial tithes arising therein, except in respect to the several parcels of arable land lying dispersed in the *Open Fields*, containing ten acres, which had never paid any small tithes whatsoever. They denied, that such of the lands in the parish as were parcel of an ancient grange formerly part of the possessions of a monastery, religious house, or priory, called *Grace Dieu*, were, by any means, discharged from the payment of tithes, and therefore claimed to be entitled to a moiety of all great tithes whatsoever yearly arising on the said lands, in like manner as they claimed the said tithes from the other lands and grounds in the parish; and they disclaimed any right or title to the vicarial tithes claimed by the plaintiff.

*Sutton* dies, and  
the suit is re-  
vived.

The defendant *Sutton* died, and the suit was revived against his executors.

The cause  
heard.

The evidence  
read.

The plaintiff replied to the answer of the defendant *Sutton* and others, and witnesses were examined on both sides; and the cause came on to be heard the tenth day of *February* instant; and upon hearing counsel; and upon reading the bill; the answer of the defendant *Toon*; an order to prove exhibits; an appropriation in the time of *Robert, Bishop of Lincoln*, by consent; the same in the time of *William* ———, rector of the church of *Belton*, of the nuns of the monastery of *Grace Dieu*;



*Dieu*, and of *Lady Anne Roche de Velun*, patroness of the said monastery and church; an endowment of the vicarage of *Belton*, dated the seventeenth of the calends of *October* 1274; a copy of a record in the augmentation office, being an account of *John Beaumont* and *John Bosom*, collectors of the rents of the late priory of *Grace Dieu*, in the said county of *Leicester*, from *Michaelmas*, in the thirtieth year of *Henry the Eighth*, to the *Michaelmas* following; and on reading, by consent, for the defendants, a copy of a record in the augmentation office, dated the twenty-seventh of *October*, in the thirtieth year of *Henry the Eighth*, being the surrender to his majesty of the monastery of *Grace Dieu*, in the said county; a copy of another record in the said office, dated the thirtieth of *March*, in the thirtieth year of the said king, being a grant from the said king to *Sir Humphrey Forster* of the site of the said monastery of *Grace Dieu*, with *Merrial Grange*, and other the lands and possessions thereto belonging; several depositions this day; and hearing the reply; and upon full debate of the matter;

HASTINGS  
against  
TOON.

THE COURT ordered the bill, so far as it sought a satisfaction from the defendants *Toon* and the representatives of *J. Sutton*, deceased, for the tithes arising on all the lands in the occupation of them which were parcel of *Merrial Grange*, to be dismissed with costs.

The bill dismissed as to the land *Toon* and *Sutton* held in *Merrial Grange*.

THE COURT further ordered the bill, as to so much as sought a satisfaction from the defendants the representatives of the defendant *J. Sutton*, deceased, for the tithes arising from the *Ten Acres of Land* occupied by the said *J. Sutton*, lying in the *Open Fields* of the parish of *Belton*, to be dismissed without costs, the plaintiff waiving any account of the said tithes.

Dismissed as to the tithes of the ten acres in the *Open Fields*.

THE COURT further ordered the bill to be dismissed as against the defendant *Keck* and others, with costs according to the course of the Court.

Dismissed against the impropiator with costs.

THE COURT further ordered the deputy remembrancer to take an account of what was due from the defendant *T. Gibbons* for the tithes of the several titheable matters and things demanded by the bill; and that the said defendant do pay the plaintiff his costs to this time, so far as the same related to him, to be taxed, &c.

The tithes of the lands in the possession of *Gibbons* decreed.

SMYTHE, Chief Baron.  
ADAMS, Baron.  
PERROTT, Baron.

BENNETT

HILARY TERM  
14. GEO. 3.

BENNETT *against* TOCKER.

*Cornwall, 1st March 1774.*

The vicar of *Gwinear*, in *Cornwall*, is entitled to the tithes arising on the two estates called *Drewallas* and *Bosparva*, in the said parish, in kind,

THE vicar of *Gwinear*, in *Cornwall*, claimed all tithes whatsoever, except the tithes of corn and grain yearly arising therein; and stated, that the defendant had, ever since the year 1764, occupied farms in the parish, and had mown grass, and made hay thereon; that he had also a quantity of hops, apples, pears, plumbs, turnips, carrots, potatoes, and furze; that he had also of his own, and had taken in from other persons, a number of barren and unprofitable cattle, particularly horses and mules for the carriage of tin, copper, ore, lead, coals, and other things for hire or for sale, which he had agisted, depastured, and fed upon his lands in the parish, and had several titheable matters and things, the tithes of which, and *Easter offerings* at twopence a-head, he ought to have paid, but had refused so to do. The bill therefore prayed an account, and satisfaction for the same.

The defendant said, that there were two estates in the parish called *Drewallas*, otherwise *Drollas*, and *Bosparva*; and that, in lieu of all the vicarial tithes arising therefrom there was due to the vicar a *modus* of eighteen shillings and no more, but at what time it commenced, or how long it had been paid he knew not, but believed it had been paid, from the year 1718 to 1769, and for which he said he had receipts in his custody.

THE COURT ordered the deputy remembrancer to take an account of all the titheable matters which had respectively arisen upon the two estates called *Drewallas* and *Bosparva*, and for *Easter offerings*, during the time demanded by the bill; and that the defendant do pay the plaintiff his costs: further directions and subsequent costs to be reserved till after the report,

EASTER TERM,  
14. GEO. 3.

BATEMAN *against* AISTROPPE.

*Lincolnshire, 28th April 1774.*

The vicar of *Whapload*, in *Lincolnshire*, claims the tithes of the parish,

THE bill stated, that on the twenty-eighth of *October* 1768, the plaintiff was duly instituted into the vicarage and parish church of *Whapload*, in the county of *Lincoln*, and on the twelfth of *November* following was duly inducted therein; that he afterwards qualified himself for the enjoyment, and had ever since been, and then was vicar thereof; and that he was, as such, entitled to all tithes whatsoever arising therein and in the titheable places thereof, as were by any means payable to the vicar thereof; that

that by ancient endowment, or other lawful means, the vicars of the said parish for the time being had, for a great number of years, been entitled to the tithes of hay, and to all fruits, revenues, and oblations whatever, thereto belonging (except only the tithe of corn, wool, lambs, hemp, and flax, which were due and payable to the defendants the governors of the free grammar schools of *Robert Johnson*, clerk, and of the two hospitals of *Christ in Okeham* and *Uppingham*, as impropriate rectors of the said church), save that the vicars thereof, by virtue of such endowment, were entitled to the redemption of all wool and lambs within the said parish, from number five and under; but that above such number, the same were due and payable to the impropriate rectors aforesaid; that the defendant *Aistrophe* and others then occupied, and during all, or the greater part of the time since the twelfth of *November 1768*, had occupied within the said parish great quantities of land, on which they respectively had in each year great quantities of titheable matters, the tithes whereof were justly due and payable to the plaintiff as vicar thereof, and particularly that they had from time to time, kept, fed, and fattened on their said lands great numbers of sheep, which they had sent to *London* or elsewhere for sale; that all, or the greater part of such sheep, having been kept some time after the shearing thereof, the plaintiff, as vicar, by virtue of the said endowment, was entitled to the tithe of agistment of all such sheep from the time of their last shearing until they were sold off fat or taken out of the said parish for sale before the next shearing day; that the said tithe was well worth one penny a month for each sheep, they being mostly of a large size; that the defendants, during all or most of the said years since the twelfth of *November 1768*, had likewise kept, fed, and depastured on their lands in the said parish divers beasts and other unprofitable cattle, the tithe of the agistment whereof was due to the plaintiff; that the defendants had neglected to pay the several tithes aforesaid; that a large sum of money was then due to him from each of them; that he had frequently applied to them to account for the same; but that they, combining with the said impropriators and the lessees of the rectory, had pretended, that no such tithes were due, but that the lands then occupied by them were discharged therefrom, or due to the impropriators or the lessees. The bill then charged, that, on the contrary, the plaintiff was well entitled thereto; and prayed, that the defendants might account with and pay him for the same.

The defendant *Aistrophe* and others the occupiers admitted, that the plaintiff was vicar, and entitled to several species of tithes; but whether by ancient endowment or otherwise they could not say. They also admitted, that the following tithes had been yearly and immemorially paid to the vicar, TO WIT, for

BATEMAN  
against  
AISTROPPE.

except of corn,  
wool, hemp, and  
flax; and of  
wool and lambs  
above the num-  
ber of five;

and states, that  
the defendant  
*Aistrophe* had de-  
pastured sheep  
for sale after  
they had been  
sheared;

that the agist-  
ment tithe of  
such sheep was  
worth 1d. a  
month;  
that he had like-  
wise agisted un-  
profitable cat-  
tle;

and that he had  
refused to pay  
the tithes there-  
of.

The defendants  
insist, that 1s.  
an acre is due in  
lieu of tithe  
hay;



BATEMAN

*against*

AISTROFFE.

1d. in every 1s.  
seeds sell for, in  
lieu of the tithe  
thereof;

that the tithes  
of corn, wool,  
limes, hemp,  
and flax, were  
due to the im-  
propriator;

that 1d. only  
was due for e-  
very fleece of  
wool, and every  
lamb under five;

$\frac{1}{2}$ d. for every  
lamb;

$\frac{1}{4}$ d. for a cow;

$\frac{1}{2}$ d. for every

calf under se-

ven; 20d. for

seven calves;

and  $\frac{1}{2}$ d. for

every calf above

seven;

$\frac{3}{4}$ d. a foal; 5s.

for seven; and

$\frac{3}{4}$ d. for each

above seven;

$\frac{1}{4}$ d. for a barren

beast kept a

month and sold;

the tenth pig;

the tenth goose;

the tenth tur-

key;

$\frac{1}{4}$ d. for a horse a-

gisted a month;

$\frac{3}{4}$ d. for garden

and orchard;

2d. for *Easter*

offerings;

$2\frac{1}{2}$ d. for house

and fire;

1d. in 1s. or 2s.

in 20s. for wood;

2d. for bees

taken;

$\frac{1}{4}$ d. for bees

standing;

mortuaries by

statute;

all payable at

*Easter*;

for hay, the tithes in kind, or one shilling an acre as a *composition* in lieu thereof; for rape seed, cole seed, mustard seed, and turnip seed, the tithes thereof upon the land, or a shilling penny, TO WIT, one penny for every shilling for which such seeds were sold, upon request after being sold, at the choice of the vicar, he making such choice at the time of threshing the seeds. They also said, that the tithes of corn, wool, lambs, hemp, and flax, were, as they believed, due and payable to the defendants *the Governors*, as impropriate rectors of the vicarage, or their lessees; and averred, that the defendants *Blackith* and *Fowler* were the present lessees thereof. They also said, that the vicars of the said vicarage, or their lessees, were entitled to an halfpenny, and no more, for every fleece of wool and every lamb under five, called *odds of wool and lamb*, and not to the tithe in kind thereof; all above that number belonging to the impropriate rectors as aforesaid. They also said, that within the said parish there were several *modus*es paid to and accepted by the vicar thereof in lieu of the following tithes, TO WIT, for every lamb, one halfpenny, and no more; for the milk of every milch cow, fourpence yearly; for every calf under seven, one halfpenny, and no more; and in case the parishioners and ground occupiers had seven calves in one year, then twentypence in lieu of the tithes of the said seven calves; for every calf above seven, one halfpenny each; for every foal bred in the said parish under seven, one halfpenny, and no more; and in case any parishioners or ground occupiers had seven foals in one year, then five shillings; and for every foal above seven, one halfpenny each; for every barren beast above one year old, which had been kept in the parish above a month, and then sold or removed, fourpence yearly, in lieu of the agistment tithe thereof, and not the tenth part of the profit; of young pigs, the tenth when three weeks old; of geese, the tenth when green, or at *Lammas*, at the choice of the vicar; of young turkeys, the tenth; of every horse or beast of a stranger agisted in the said parish, if but one month, fourpence yearly, by the person so taking the same to agist; for a garden and an orchard, eightpence yearly, and no tithes in kind; for every communicant above fourteen years old, twopence; for every dwelling-house and fire, half-yard, or privy tithes, otherwise called *shot and wax*, twopence halfpenny; for wood, a shilling penny, *to wit*, a penny for every shilling for which it sold, upon request, or, at the choice of the vicar, two shillings in the pound; for every stock of bees taken, fourpence, and not in kind; for every stock of bees standing all the winter, and not taken, twopence, and not in kind; and mortuaries as by the statute; and that all such payments were made yearly at *Easter*, or afterwards, on demand thereof. The defendants further said, that during the said time they had yearly occupied, within the said parish and the titheable places thereof, divers quantities of meadow and pasture lands, and

set

set forth the same; that the defendant *Aistroppe* also occupied with his land, eight pieces, called *Park Coates*, which were tithe free: and they also set forth an account of such sheep as had been, from time to time, fattened on the lands they so occupied in the said parish in each year, and the time when such sheep had been sold or removed therefrom, since the plaintiff's induction to the time of filing his bill. They further said, that the impropriate rectors of the said parish, or their lessees, had, from time whereof the memory of man was not to the contrary, been entitled to, and had received from the parishioners and inhabitants of the said parish, and did receive from the defendants and all other the inhabitants thereof, the yearly tithes following, *to wit*, corn, wool, lambs, hemp, and flax in kind, and an agistment tithe for all sheep sold out of the said parish between *Candlemas* and *Shearing Day*, which had been agisted on any lands therein, except those which were tithe free, threepence an head; and also a *composition* tithe of one fleece in the hundred, reckoning six score to the hundred, every month, for all sheep which were brought into the said parish after the second of *February*, and shorn therein, upon which day an account of such sheep was usually taken by the impropriate rectors or their lessees. They admitted, that during the said time they had severally fed and depastured divers sheep, which had been shorn in the parish, and afterwards depastured on lands therein, and then sold off fat, or otherwise disposed of, an account whereof they had set forth in their answer; but they denied, that any agistment tithe was due to the plaintiff in respect thereof, for that all the sheep that had been so from time to time fed, sold, or removed, were as often replaced by fresh ones purchased by the defendants, and depastured on their said lands in their stead, and continued so thereon in course till the next shearing-day, when they paid a full tithe in kind for the same to the impropriators or their lessees. They also said, that whenever any sheep had been shorn in the parish, and depastured on their lands after shearing thereof, and afterwards sold or removed therefrom before the then next *Candlemas* or *Counting Day*, no agistment tithe had ever been paid or demanded, either by the impropriators or their lessees, or by the vicar thereof; but that such tithe wool in kind had always been understood as a compensation or satisfaction to such occupier, he having paid a full year's tithe of wool, though such sheep had not been depastured more than half an year, which was frequently the case.

The defendant *Aistroppe* said, that he and his late father had been tenants or lessees of the impropriate tithes for forty years before the present lessees; that during all such time, it was understood that the parishioners, in consideration of paying a full tithe of their wool for all sheep brought in after *Clipping Day*,

*Clipping Day* was always held a satisfaction for the tithe of the

and

BATEMAN  
against  
AISTROPPE.

that the tithes of corn, wool, lamb, hemp, and flax, was payable in kind to the impropriator;

and 3d. a head for sheep agisted between *Candlemas* and *Shearing Day*, and a fleece for every score brought in after the 2d of *February*;

that no tithes was due to the plaintiff for agisting of sheep after the shearing day, because these that had been sold off were supplied by others.

The defendant *Aistroppe* said, that the payment of the tithe of wool of all sheep brought in after

BATEMAN  
against  
AISTROPPE.

and before *Candlemas*, and afterwards clipped in the parish, were not to pay any agistment tithe for such sheep; that no such tithe had ever been demanded, by reason that such sheep which were shorn paid the whole year's tithe to the impropiators.

that only 4d. a-head was payable for barren cattle, if above a year old, and depastured a month.

The defendants admitted, that they had kept on their lands, during the said time, divers barren beasts, which were fattened thereon, and afterwards sent to *London* or other places for sale; and that, for time immemorial, there had constantly been paid to the vicars of the said parish fourpence for every beast sold or removed, in lieu of the agistment tithe thereof, provided such beast was above a year old, and had been agisted therein above one month, but not otherwise; and they set forth an exact number of the barren beasts which had been fattened on their lands during the said time; but at what particular time they were sold or removed therefrom they said they could not set forth, having kept no account thereof. They denied, that they had ever refused to account with or pay the plaintiff all or any of the tithes, oblations, and obventions, that were due to him in right of his vicarage; on the contrary they averred, that before the filing of the bill they had respectively offered to pay all such tithes and other emoluments as were due from them to the plaintiff since his institution thereto, and which sums they had so tendered, they had set forth in their answer. They further said, that at the time such tenders were made, they believed that sixpence halfpenny was offered to the plaintiff for each of their dwelling-houses and fire-hearth, commonly called *shot and wax* for 1770; and that he was entitled to no more than twopence halfpenny for each house and fire-hearth, which sum they then offered to pay.

that the lands called *Park Coates* are tithe free, as having been parcel of the abbey of *Croyland*.

The defendant *Aistroppe* said, that he also occupied several acres of arable, meadow, and pasture land, in eight pieces, called *Park Coates*, which he believed had been time immemorially held and discharged of and from the payment of tithes, as being appendant to and formerly belonging to the abbey or monastery of *Croyland*, in *Lincolnshire*, at the dissolution of which such lands were, by such abbey, held free and discharged from payment of tithes, the same being one of the greater abbies, by virtue of the statute of 31. *Hen. 8.*; and that no tithes whatever were payable for or in respect of such lands; but that they were discharged therefrom; that neither he nor any other occupier thereof, as he knew or believed, had ever paid any tithes for the said lands since the dissolution of the said abbey, or within memory, to any impropiator, rector, or vicar whatsoever; and that therefore he had not kept any account of the sheep or other cattle he had fed or depastured thereon.

The impropiators and their lessees answer.

The defendants *the Governors*, and the defendants their lessees, by their answers, admitted, that the plaintiff was duly instituted



to the said vicarage, and, as such, was entitled to receive several species of tithes, under some endowment thereof; but not having seen the same, they referred the plaintiff to such proof as he could make; but they said, that they believed that under such endowment he was entitled to the tithes of cole seed, of wool, and of lambs when under five, and not otherwise.

BATEMAN  
against  
AISTROPPE.

The defendants *the Governors* said, that they claimed to be lay rectors and impropiators of the parish, and that, as such, they were entitled to all tithes, except such as the vicarage was endowed with, and particularly to all the tithes of corn, grain, wool, and lambs, save as before mentioned, hemp, flax, and an agistment tithe for all sheep sold out before shearing, which had been agisted on lands in the parish; that the said agistment tithe, as to sheep sold between the second of *February*, the usual day of taking account thereof, and the time of shearing thereof, was, and immemorially had been, as they believed, threepence for each sheep.

The lay impropiators insist, they are entitled to all tithes of corn, grain, hemp, flax, and agistment.

All the defendants said, that *the Governors* were entitled as aforesaid; and that, by indenture dated the twelfth of *October* 1769, they had demised to the defendants *Blackbith* and *Fowler* the rectory of *Whaplod*, the chancel of the church, the glebe lands, and all the tithes of corn, grain, and other tithes whatsoever, to the said rectory belonging, except timber trees and the yearly contribution of beans, commonly called *pardon beans*, given to the poor by the farmers of the parsonage, to hold the same to twenty-one years, at the yearly rent of three hundred and sixty-five pounds. They denied, that any agistment had, to their knowledge, been paid in the parish for unprofitable cattle to any person whatsoever, save as aforesaid; but said, that such agistment tithe was due of common right to the defendants, as lay rectors and impropiators; and that they had good title thereto. They also denied that, to their knowledge, any lands in the said parish were exempt from the payment of tithes; or that if there were any such, how such exemption was made out. But they said, that they believed that the other defendants had occupied lands in the parish, and had had titheable matters thereon; but what quantity thereof, and how long they had occupied the same, or what the several species of titheable matters which they had therefrom were they could not tell; but referred to the answer of the occupiers.

The lessees of the rectory insist, that the whole tithes of the rectory were leased to them;

that the agistment tithe was due to them as lessees;

that no lands in the parish were exempt from tithes;

and that the occupiers had had the titheable matters before stated.

The plaintiff replied; the defendants rejoined; and witnesses were examined on the part of the plaintiff as well as on the part of the defendants the occupiers; and upon hearing counsel several days; and on reading the answers of the defendants the occupiers; the deposition of *H. Hill*; an endowment from the registry of the *Bishop of Lincoln*; the induction of the plaintiff

The cause heard, and time taken to consider of the case.

BATEMAN  
against  
AISTROPPE.

to the vicarage of *Whapload*; and several other depositions for plaintiffs; and also reading several depositions for the defendants the occupiers; and also reading by consent, *TO WIT*, copies of three terriers from the registry of the *Bishop of Lincoln*, dated 1692, 1706, and the twenty-eighth of *June* 1709; and upon full debate of the matter; the cause was adjourned over for THE OPINION OF THE COURT; and the same coming on again accordingly this day;

The bill, as against the impropiators dismissed.

The agistment tithe of sheep, from shearing day until they were sold, decreed.

The agistment tithe of all unprofitable cattle under a year old decreed.

The *modus* of 4d. a head for agisting all unprofitable cattle above a year old decreed.

No costs to be paid by either party.

THE COURT ordered the bill, as against the impropiators, to be dismissed without costs; an account to be taken of what was due for the tithes of agistment of all sheep which had been depastured on the lands occupied by *Aistroppe* and others during the time in the bill mentioned, and by them fatted and sold off, or otherwise disposed of, from the time of their last shearing until they were sold off fat, or taken out of the said parish for sale before the next shearing day; an account to be likewise taken of the tithe of agistment of all barren and unprofitable cattle depastured on the lands of the defendants, except such as were above one year old, and which had been agisted in the parish above one month, which are to be accounted for at the rate of fourpence a head in lieu of such agistment tithe, according to the *modus* stated in the occupiers answer; and no costs to be paid by either party to this time, but subsequent costs and all further directions to be reserved till after the report.

SMYTHE, Chief Baron.

PERROTT, Baron.

EYRE, Baron.

BURLAND, Baron.

TRIN. TERM,  
14. GEO. 3.

### POWLETT against BATES.

*Hampshire, 9th June 1774.*

The vicar of *Kingsclere*, in *Hampshire*, is entitled to the tithes of all grass seeds in the parish, and to the tithes of corn, grain, and all other great and predial tithes, in the vill of *Lapute* and *Buttlesham*, and in the lands called *De La Hethe*,

See *Kent v. Webb*, vol. i. page 79.; *Webb v. Arnold*, vol. i. page 162.; and the case of this parish, Hilary Term, 26. Geo. 3.

THE vicar of *Kingsclere*, in the county of *Hants*, claimed all manner of small tithes yearly arising therein, particularly the tithes of clover seed, rye grass seed, saintfoin seed, and all other grass seeds; the tithes of wood, corn, grain, and all other great and predial tithes, yearly arising in the districts or villis of *Lapute* and *Buttlesham*, otherwise *Bottisham*, otherwise *Baltesham*, and the lands called *De La Hethe*, in the said parish, or some pecuniary satisfaction in lieu thereof; and stated, that the defendant *Bates* had occupied *Porch Farm*, the defendant *Flower*, *Sandford Farm*, and the defendant *Pierce* divers lands therein; and that they had saintfoin, rye grass, clover, and other grasses which stood for seeds, growing thereon, and had reaped, mowed, and taken the same, without setting out the tithes thereof. The bill therefore prayed, that the defendants *the Duke of Bolton* and *Mr. Herbert* might severally set forth, whether they had or

claimed

claimed any right or interest to the tithes of clover seed, rye grass, saintfoin, and other grass seeds, or to the tithes of wood or corn or other grain yearly arising in the said districts, vills, or lands, or any, or either, and which of them, and how they made out and derived the same; and that the defendants the occupiers might pay the tithes subtracted and withheld by them.

POWLETT  
against  
BATES,

The defendant *Bates* and others said, that the parish of *Kingsclere* was a vicarage; but that they did not know that the vicar thereof was, either by ancient endowment or prescription, entitled to all manner of small tithes yearly arising therein, or to the tithes of clover seed, rye grass seed, saintfoin seed, or other grass seeds; but they admitted, that he was entitled to the tithes of wood, corn, grain, and other great and predial tithes yearly arising in certain districts of the parish; but in what particular, or whether in the districts of *Laputte* and *Buttletham* and the lands called *De La Hetbe* and *Ichmeswell*, they could not say. They further said, that the defendant *the Duke of Bolton* being seised of the rectory and parsonage of *Kingsclere*, with the tithes and appurtenances thereto belonging, and other the lands, tithes, and premises, by indenture of lease dated the fourth of *April* 1754, made between him and the defendant *Herbert*, for the considerations therein mentioned, demised to him all the rectory parsonage, messuage, and tenement, with the appurtenances, in the parish of *Kingsclere*, called *Kingsclere Parsonage* and *Oakley Chapel*, with the appurtenances, and the glebe lands thereto belonging, and the tithes of all sorts of corn, grain, grass, hay, wool, lambs, and all other titheable things, of what kind, nature, quality, or name, and all oblations, pensions, obventions, portions, fruits, profits, &c. &c. thereto belonging; that by virtue of the said lease, the defendant *Herbert* or his tenants enjoyed the said rectory, &c. so demised, and received the profits thereof.

The defendants *Bates*, *Flower*, and *Pearse*, said, that they occupied three several farms, viz. *Porch Farm*, *Sandford Farm*, and *Common Court Farm*, with other lands; that the tithes of the farms and lands were parcel of the premises so demised by the said indenture; and that they laid in that part of the parish where the great or rectorial tithes were collected and received by the impropiator of the rectory. They admitted, that during the time they had occupied the said lands, they had sown them with grass seeds, viz. saintfoin, hemp, clover, rye grass, and broad clover; that they stood for seed; and that they had mowed, cut, and carried away the same, without setting out the tithes thereof, or making the plaintiff any satisfaction for the same; and they insisted, that by virtue of the said lease the defendant *Herbert* was entitled to all the great and small tithes arising in the said parish and the titheable places thereof, except



POWLETT  
against  
BATES.

what the vicar was endowed with ; and that neither the plaintiff, nor any of his predecessors, had ever been endowed of the tithes of such seeds as aforesaid ; but that, on the contrary, the owners and impropiators had constantly taken and enjoyed the same. They further said, that the vicars were so far from receiving them, that the lessee of the rectory had always taken the tithes of the meadow lands and of wool and of lamb within the parish. But they said, that they believed that the vicarage had been endowed with a large portion of the tithes of corn and grain ; but insisted, that the impropiator was entitled to the small tithes arising from the meadow lands of which the vicar was endowed, and that he, and not the vicar, had received the great tithes thereof.

The defendant *Herbert* said, that the parish was a rectory and a vicarage, but that the vicar was not entitled to the tithes of clover seed, rye grass seed, saintfoin seed, or other grass seeds, but only to the tithes wood, corn, grain, and other great and predial tithes, yearly arising within certain districts in the parish ; that the defendant *the Duke of Bolton*, being seised of the rectory and tithes, demised the same to *Robert Herbert* ; that in 1769 *R. Herbert* died, and duly made his will ; and that he, the defendant, became possessed of the said lease ; and that the defendant's farm laid in that part of the parish where the great or rectorial tithes were collected and received by the impropiator ; that the said vicarage had been formerly endowed or augmented with a large portion of tithes of corn and grain ; that the impropiator or his lessee was entitled to the small tithes arising from the meadow land of which the vicar was endowed, and had received the great tithes, and not the vicar ; that he, the defendant, claimed title to all such tithes as had been demised by the said lease, and had been usually taken and enjoyed by the impropiator or his lessee ; but whether of the district or lands insisted on by the plaintiff he knew not, being unacquainted with the descriptions.

*His Grace of Bolton*, by his answer, said, that he believed the parish of *Kingstlere* was a rectory and vicarage ; but knew not whether the said vicar was entitled, by endowment or prescription, to all small tithes arising within the said parish, or to the tithes of all grass seeds ; but believed that he was entitled by endowment to the tithes of wood, corn, grain, and all other great and predial tithes ; but whether in the district or vills mentioned in the bill he knew not. He further said, that the plaintiff had been duly instituted into the vicarage, and was entitled to such great and small tithes as had usually been taken. He admitted, that his uncle had granted such lease as before mentioned ; knew not, whether the occupiers of lands within the said parish were or were not liable to pay the plaintiff any tithes for seeds, flower, or grain of saintfoin, rye grass, clover, and other beneficial  
grasses ;

grasses ; and that the said rectory having been usually let by his ancestors, knew not what right or interest he or his lessee had to such tithes, or to the tithes of corn or grain arising within the districts in the bill mentioned ; but submitted to the judgment of the Court, what right or title he had thereto.

POWLETT  
against  
BATES.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on both sides ; and upon hearing counsel for all parties ; and reading for the plaintiff an entry of an endowment out of a book from the registry of the *Bishop of Winchester*, dated in the year 1305 ; two other entries out of the said book, both relating to the parish of *Kingsclere* ; several depositions ; and also reading, for the defendants, another book from the registry of the *Bishop of Winton*, dated in the year 1333 ; and another entry in the said book, dated the twenty-fifth of June 1338 ; and after full debate of the matter ;

THE COURT declared, that the plaintiff, as vicar, was entitled to the tithes of all seeds, to wit, of clover, saintfoin, rye grass, and all other seeds arising on the lands in the said district or vill in the bill particularly mentioned and described ; and decreed his right to the same to be established to him and his successors, vicars of the said parish of *Kingsclere*, against the *Duke of Bolton* and his heirs, and all who should hereafter claim under him.

THE COURT thereupon ordered the deputy remembrancer to take an account of what was due to the vicar for all the said tithes of seeds, and also of corn, grain, and other great and predial tithes yearly arising within the districts or vills of *Laputte* and *Buttlebam*, otherwise *Bottisbam*, otherwise *Baltesbam*, and the lands called *De La Hethe*, in the said parish of *Kingsclere* ; the defendants to pay the plaintiff his costs ; and further directions and subsequent costs to be reserved till after the report, &c.

GEO. PERROTT.  
JA. EYRE.  
J. BURLAND.

# KYNASTON against PIERCY.

*Middlesex, 20th June 1774.*

TRIN. TERM,  
14. GEO. 3.

THE plaintiff, as executor of his father, the late impropiator of *Saint Botolph without Aldgate*, in the county of *Middlesex*, claimed from the defendant, for several years past, twenty shillings a-year for the tithes of five dwelling-houses in *Saint Catherine's Lane*, on *Little Tower Hill*, as an ancient composition for the same.

The rector of *St. Botolph without Aldgate* is entitled to 20s. a year for the tithes of five houses in *St. Catherine's Lane*, on *Little Tower Hill*.

The defendant admitted the plaintiff's title to the tithes.

H h 3

THE See ante, 9. 12. 135.

KYNASTON  
against  
PERRY.

THE COURT decreed an account of the said tithes from Michaelmas 1759; and that the testimony of *Thomas Ferri* and *Richard Whistham*, witnesses in the cause, be perpetual; and on the eighth of July 1776, the deputy's report of the sixth instant was ratified and confirmed, and the defendant ordered to pay sixty pounds, five shillings, and sevenpence reported due, and his subsequent costs, viz. ten pounds, five shillings, for the tithes of the five dwelling-houses, and fifty pounds and sevenpence for taxed costs.

TRIN. TERM,  
14. GEO. 3.

BALL against ROBINSON.

*Suffolk, 4th July 1774.*

The rector of *Erriswell*, in *Suffolk*, is entitled to the tithes of all rabbits taken in the warrens or borders of the said parish, and sold by the owners or occupiers thereof.

THE bill stated, that the plaintiff, being patron of the parish church of *Erriswell*, in the county of *Suffolk*, was, in the year 1770, inducted rector; that he had ever since continued rector thereof; and that he had thereby become entitled to all tithes, offerings, and duties arising therein; that by some ancient custom, tithes in kind of all conies or rabbits bred and taken in the warrens, borders, or other places in the parish, by the owners or occupiers of such warrens, and by them sold, were due and payable; that such tithes in kind, or some composition in lieu thereof, had immemorially been received by the rectors of the said parish for the time being, for all conies or rabbits kept in the warrens or borders by the owners or occupiers thereof; that the defendants had, ever since the plaintiff had been rector thereof, occupied a very large warren, border, or place, stocked with rabbits, in the said parish, and had taken and enjoyed all the profits, and received large sums by the sale thereof, and had, for two years past, disposed of several thousand of rabbits out of the said warren; but that they had disposed of the same without setting out the tithes thereof, or making him any recompence for them. The bill further charged, that as such custom had subsisted for time immemorial, he was entitled to the benefit thereof, although it had been suspended, owing to the confusion in which the rectory had been in on account of the frequent change of rectors, and to the many litigations which had subsisted between the patrons and the bishop as to the right of presentation, and to the plaintiff's immediate predecessor, having been upwards of eighty years old, and by reason of his age and infirmities unwilling to litigate his right to the said tithes. The bill also charged, that tithes in kind, or a satisfaction for the same, had been always paid by the defendants and their predecessors the former occupiers of the said warren uniformly until the commencement of such irregular proceedings; and that the defendants, or some of them, had paid tithes in kind, or some compensation, to a former rector of the said parish. The bill therefore prayed, that they might set forth what numbers of conies



conies or rabbits had been taken, sold, or disposed of, and to what amount, from or out of the warrens, borders, or places in the parish since the plaintiff became rector thereof; the value thereof; and account for and pay him what should appear due; that the plaintiff's ancient witnesses might be examined and their testimony perpetuated; and that the plaintiff's right to such tithes in kind for the future might be established by the decree of this court.

BALL  
against  
ROBINSON.

The defendant *Nathan Robinson* admitted, that the plaintiff was duly inducted into the rectory, and had continued rector thereof, and that, by virtue thereof, he was entitled to all such tithes and titheable matters arising within the parish, as belonged to the said rectory, and to all monies which, by custom or *modus*, had been payable for the same; but he denied, that he was entitled to tithes in kind of all conies or rabbits bred and taken in the warren or warrens, borders, or places, belonging to the said parish. He further said, that he had occupied, for thirty-six years past, two large warrens, stocked with rabbits, containing about nine hundred acres, and had received the profits arising by the sale of such rabbits, without setting out the tithes in kind, or making the plaintiff any satisfaction for the same. He further said, that his father had compounded with a *Mr. Stukeley* for his tithes, at thirty-five pounds, ten shillings yearly; but that the tithes of rabbits was not understood to be included.

The other defendants *John Robinson* and *Martha Robinson* answered to the same effect as to the tithe of rabbits; and set forth the farms and lands they occupied, and what they had paid to the plaintiff.

The defendant *N. Robinson* died, and the plaintiff revived the suit against his representatives, who appeared and answered; and the suit being properly revived;

The plaintiff replied; and the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides; and reading the proofs in the cause; and on debate of the matter;

THE COURT ordered an issue to try the custom.

The trial was accordingly had; and the jurors found,  
 “ That by an ancient custom, usage, or prescription, for  
 “ time whereof the memory of man was not to the con-  
 “ trary, tithes in kind, or a payment, composition, or satis-  
 “ faction in lieu thereof, of all conies or rabbits bred and taken  
 “ in the warren or warrens, border or borders, or other place  
 “ or places, within or belonging to the said parish of *Erriswell*,  
 “ or the titheable places thereof, stocked, planted, or depastured  
 “ by or with conies or rabbits, by the owner or owners, farmer

BALL  
against  
ROBINSON,

" or occupiers, or farmers and occupiers, of such warrens,  
" borders, or places, and by him, her, or them, sold, were due  
" and payable to, and had constantly been had, received, and  
" taken by the rector or rectors of the said parish for the time  
" being, or by some other person or persons, by, to, or for his or  
" their order or use."

The Judge who tried the cause certified, " That no tithe had  
" been paid for a piece of land called *the Border Part of Cham-*  
" *berlayne's Farm*, containing about one hundred acres, which  
" was stocked with rabbits."

The cause came on on the thirteenth of July 1775, to be  
further heard upon the *postea*; when upon hearing counsel on  
both sides; and reading the said decree and *postea*; and on de-  
bate of the matter;

THE COURT ordered the bill to be dismissed as against  
*Martha Robinson*, with costs both at law and in equity; and  
as to so much of the same as sought relief against *J. Robinson*  
before the death of *Nathan Robinson* his uncle, with costs; and  
that the deputy remembrancer take an account of what is due  
from the defendant *J. Robinson*, as executor of his uncle the  
said *Nathan Robinson*, deceased, and since his decease from the  
said defendant *J. Robinson*, during his occupation of the said  
farm in the pleadings of this cause mentioned, for the tithes of  
the conies or rabbits which had been taken, sold, or disposed of  
by the said *Nathan Robinson* or *John Robinson* from the warren,  
border, or place, or warrens, borders, or places, by them severally  
occupied within the said parish of *Erriswell* during the time  
demanded by the bill; and that the defendant *J. Robinson*  
do pay to the plaintiff what shall be reported due to him  
thereon, together with the said plaintiff's costs of suit, both  
at law and in equity, to this time; except as to the several  
matters concerning which the said bill was dismissed.

The bill was also dismissed as to the defendants *N. Robinson*  
and *N. Rumblow* (two of the executors who did not act) without  
costs,

SMYTHE, Chief Baron.

EYRE, Baron.

BURLAND, Baron.

TRIN. TERM,  
14. GEO. 3.

ROGERS against N. TWIBELL.

Yorkshire, 8th July 1774.

Quærit, Whether  
the prebendary  
of *Laughton*, in  
*Yorkshire*, is en-  
titled to tithes in kind, or only to sixpenny *moduges* in lieu of tithe hay of certain lands in *South Anstien*,  
*North Anstien*, and *Woodjatts*.

THE lessee of the prebendary of *Laughton en le Morthing*,  
belonging to the cathedral church of *Saint Peter*, in *York*,  
claimed, by indenture dated the first of *March* 1764, all profits,

tithes,

tithes, mortuaries, oblations, and offerings, arising in the towns of *South Anstien*, *North Anstien*, and *Woodsetts*, and particularly of *Woodsett Farm*, in the parish of *Anstien*.

ROGERS  
against  
N. TWIBELL.

The defendant admitted, that he was owner and occupier of *Woodsett Farm*; and said, that the house homestead, &c. thereof, until they were exchanged for *Well Close*, which exchange had continued from time out of memory, had been used, occupied, and enjoyed together as one farm; that sixpence yearly, at *Easter*, had been immemorially paid to the prebendary of *Laughton en le Morthing* by the occupier, as a *modus* in lieu of all tithe of hay arising on such farm, or any part thereof; that the said sum had been so accepted until the year 1770; that another *modus* of sixpence yearly, and no more, had been, until very lately, immemorially paid, at such time as aforesaid, by the occupier for the time being of each other ancient farm in the township of *Woodsetts*, to the prebendary, in lieu of the tithe of all hay arising on such ancient farm; that twopence yearly, and no more, had been constantly paid as aforesaid as a *modus* in lieu of the tithe hay arising on such ancient cottage: and he insisted the said *moduses* were in lieu of tithes of all hay, whether made of clover or other grafs.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides; and reading the several depositions taken in the cause; and several receipts for *Easter* offerings, and for small and great tithes;

THE COURT ordered the bill to be dismissed as to all matters except the tithes of the farms covered by the *moduses* laid by the defendant in his answer, with costs to be taxed; and that a trial at law be had upon the following issues:

FIRST, "Whether sixpence yearly, and no more, hath been, from time to time, constantly, from time whereof the memory of man is not to the contrary, payable by the occupiers of a certain farm and lands, called *the House, Homestead or Plantation, the Nether Hawdes, the Upper Hawdes, the Upper Briery Hawdes, the Upper Pickle Yards*, one acre, part of *the Neather Pickle Yards, Spring Meadow, the Upper Cow Close, the Neather Cow Close, Lockley Lome Close*, and three acres and two roods of land in *the Crofts Head Close*, and a close called *the Croft*, in the pleadings mentioned, at *Easter* to or for the use of the prebendary for the time being of the prebend of *Laughton en le Morthing*, or his lessee, as a *modus* for and in lieu and full satisfaction of and for all the tithes of hay arising from such farm or lands, or any part thereof; and whether such yearly sum hath been, from time to time, constantly, from time whereof the memory of man is not to the contrary until the year 1770 inclusive, accordingly at *Easter*, or so soon after as the same hath been demanded, paid by the occupier of such



ROBERTS  
against  
N. TWISSELL.

"such lands to the prebendary for the time being of the said prebend, or his lessee, as a *modus* for and in lieu and full satisfaction of and for the tithes of all hay arising on or from such lands, or any part thereof, and accepted accordingly."

SECONDLY, "Whether sixpence yearly, and no more, hath been, from time to time, constantly, from time whereof the memory of man is not to the contrary, payable by the occupiers of a certain farm and lands, called *the Saw Pitts, Hill Parcels, the Long Hills Parcel, the Cockbutts, the Roe Close, the Round Hill Close, and the Riddings*, and certain other lands called *the First Yard, the Nel Jug, the Neather Nel Jug, the Neather Well Yard, the Keller Hill*, and three acres of land in *the Effel Sick Field*, and a dwelling-house now in the occupation of *J. Turbell*, in the pleadings of this cause mentioned, at *Easter, &c.* as a *modus* for and in lieu and full satisfaction of and for all the tithes of hay arising, &c. as aforesaid."

THIRDLY, "Whether twopence yearly, and no more, hath been, from time to time, &c. payable by the occupier of a certain cottage and lands, called *the Three Acres*, part of *the Neather Pickle Yard, Shuttleworth's Close by the Lane Side, and the Guide Stoop Close*, and a certain cottage in the occupation of *W. Gascoign*, with other lands, called *the Homestead Close, Hardy's Close*, a close called *the Meadow*, and another close adjoining thereto, in the pleadings mentioned, at *Easter*, to and for the use, &c. as a *modus* for or in lieu of full satisfaction of and for all tithe of hay arising on or from such lands, or any part thereof, &c. &c."

FOURTHLY, "Whether sixpence yearly, and no more, hath been, from time to time, constantly, from time whereof the memory of man is not to the contrary, payable by the occupier of a certain close called *the Well Close*, with a certain house now in the occupation of *J. Turbell*, and other lands called *the Croft, the Croft Head, the Upper Lane Side Flat, the Neather Lane Side Flat, the Upper Yard, the Neather Yard, Tomlin Yard, the Stainbor Close, the Three Tongs Closes, the Rye Close*, the close next above it on the west by *the Lane Side, the Two Ox Pastures*, and *Quarry Holes, the Wood Ings Close, the Carr Narr Crofts, the Well Yard, Clay Flat*, ten acres of land in *the Effel Sick Field, Two Cow Closes by the Town Side*, in the pleadings mentioned, at *Easter, &c.* for and in lieu of and full satisfaction of and for all the tithes of hay arising, &c. &c." The defendant in equity to be plaintiff at law, and to be tried by a *special jury*; the judge at liberty to indorse, &c.; and all usual directions given.

It does not appear by the Book of Decrees and Orders, that these issues were ever tried, or what further proceedings were had

had in the case; but it appears, that the plaintiff filed another bill against the defendant *Twibell*, claiming the same species of tithes arising on his farm and lands at *Woodsetts*; that the defendant set up the said *modus* of sixpence in lieu of tithe hay and clover arising from his said lands; and that, on hearing the cause and reading the proofs, in the several receipts in the former cause, THE COURT also ordered the bill to be dismissed as to all matters, except the tithes of the several farms and lands covered by the *moduses*; directed a trial at law upon three issues to try the three sixpenny *moduses* in question for the said farm; that the trial of the first issue in the former cause do determine the third issue in this cause; the trial of the second issue do determine the second issue in this cause; and the trial of the fourth issue do determine the first issue in this cause; and that on the third of May 1775, THE COURT, on the motion of the plaintiff's counsel, ordered, that the plaintiff be at liberty to dismiss his bill, upon payment of the costs both at law and in this court.

ROGERS  
against  
N. TWIBELL.

## ROGERS against CHAMPION.

Yorkshire, 9th July 1774.

TRIN. TERM,  
14 GEO. 3.

THE plaintiff, as lessee of the prebendary of *Laughton en le Morthing*, in the county of *York*, also filed his bill against the defendant *Champion* to recover tithes in kind from an estate called *Cotterell Woods*, in the parish of *Anston*.

Quere, Whether there is a *modus* of 2s. a-year payable to the prebendary of *Laughton*, in *Yorkshire*, in lieu of the tithes of the estate called *Cotterell Woods*, in the township of *Woodsett*, in the parish of *Anston*, in the said county.

The defendant *Champion* said, that in April 1761 he purchased a messuage near *Cotterell Woods*, within the township of *Woodsetts* and parish of *Anston*, and the several closes of land as in his said answer mentioned, containing about two hundred and twenty-five acres; that he had occupied most of them ever since; that all the said lands had immemorially, and until the year 1761, been called *Cotterell Wood*, and occupied together as one farm; that two shillings yearly, and no more, had been immemorially payable, at *Easter*, to the use of the prebendary, as a *modus* in lieu of all the tithes arising therefrom, and had been paid accordingly until 1769; and that he was still willing, and had offered to pay the same.

The defendant *White* said, that on his father's death in 1772, he became possessed of several closes of land situate at *Cotterell Woods* aforesaid, and named them; that they, together with several acres in the possession of *Champion*, had been constantly occupied as one farm, called *Cotterell Woods*: and he insisted upon the *modus* of two shillings yearly, as before set forth.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel; and reading several depositions taken on the part of the plaintiff and defendants;

ROGER  
against  
CHAMPION,

defendants; and reading a receipt, dated the twenty-first of April 1767, for a *modus* of two shillings, signed by the plaintiff;

THE COURT ordered the bill to be dismissed, as to all matters, except the tithes of the farm covered by the *modus*, and directed an *issuetotry*, "Whether two shillings yearly, and no more, hath been, from time to time constantly, from time whereof the memory of man is not to the contrary, payable by the occupiers of the farm called *Cotterell Woods*, at *Easter*, to or for the use of the prebendary of *Laughton en le Morthing*, or his lessee, as a *modus* in lieu of all tithes whatsoever arising from such farm or lands, or any part thereof; and whether such yearly sum hath been from time to time constantly, from time whereof the memory of man is not to the contrary, until the year 1769 inclusive, accordingly at *Easter*, or so soon after as the same hath been demanded, paid by the occupier of such lands to the prebendary for the time being, of the said prebend, or his lessee, as a *modus*, in lieu of the tithes arising on or from such lands, or any part thereof, and accepted accordingly." The defendants to be plaintiffs at law, and to be tried by a special jury.

THE COURT, on the third May 1775, on the motion of the plaintiff's counsel, ordered that the plaintiff be at liberty to dismiss his bill, upon the payment of the costs, both at law and in this court.

TRIN. TERM,  
14. GEO. 3.

GILBERT against BROOK.

Kent, 9th July 1774.

The bill states, that the vicar of *Erith*, in *Kent*, had by deed poll conveyed the small tithes thereof to the plaintiff.

See Trin. Term, 11. Geo. 2. and Trin. Term, 10. Geo. 3.

that the defendant *Brook* had since *Lady Day* 1767, occupied a farm on which he had several titheable matters;

THE bill stated, that some time in May 1767, *J. White*, clerk, was lawfully instituted and inducted into the vicarage and parish church of *Erith*, in the county of *Kent*; that he was by virtue of some ancient endowment or usage entitled to the tithe of cows, calves, milk, and all small tithes whatsoever, yearly arising therein; that by deed poll, dated the twenty-third June 1767, and made between the said *J. White*, and the plaintiff's, he set and let to them all the glebe lands, the herbage of the church yard, and all and singular the small tithes due and payable to him, save only such tithes as should become payable by *Sir S. Gideon, Bart*, his heirs, &c. to hold for three years, at one hundred pounds a-year, with the provisos in the said deed mentioned, for renewing the same; that the defendant *Brook* had, ever since *Lady Day* 1767, held and occupied a farm and garden in the said parish, and had cows, milk, butter, calves, goats, kids, apples, pears, turnips, garden beans, fowls, eggs, chickens, ducklings, fows, pigs, and other titheable matters thereon;



thereon; that the defendant *Wolf*, as a gardener, had ever since *Lady Day* 1767 held and occupied a house and a small garden, whereon he had cherries, gooseberries, greens, herbs, fows, pigs, bees, and wax, but that they had not paid the tithes.

gardener and had a small garden, from which he had

GILBERT  
again  
Brook.

that the defendant *Wolf* was a fruits and herbs.

The defendant *Wolf* admitted, that *J. White* was vicar; that there were such agreements between him and the plaintiff; that ever since the twenty-third of *June* 1767, he had held an old messuage with a garden at eight pounds *per annum*, in the parish, and had grown gooseberries and currant bushes, apple and other trees, which produced little or no fruit; and that he had been advised that the plaintiff had no right to the tithes thereof, by virtue of the said agreement, inasmuch as tithes and rights of that matter lie only in grant, they could not pass but by deed, and therefore he had refused to pay the same, inasmuch as the plaintiffs could not give him a sufficient discharge for the same, and he might be afterwards compelled to pay the same over again to the said *J. White*, notwithstanding such agreement; that he had been always ready and willing to pay the vicar, or any other person duly authorised, the said tithes; that the plaintiffs had in their *original bill* stated the right to the said tithes, as founded on the agreement; that he had therefore put in a *demurrer* thereto; that on the arguing thereof the demurrer was allowed; and that it was thereupon ordered by the Court, that the plaintiffs should amend their bill, and set forth their right to the said tithes, as founded on the deed poll executed by *J. White*, as in the bill mentioned; that since the arguing of the demurrer he had been informed, and not before, that the plaintiffs had a good right to the tithes, and being undeceived he had ever since been ready and willing to pay the plaintiff one pound, ten shillings, the full value of his tithes for five years, and had offered to pay six shillings *per annum* for the same, which they had refused to accept. He said, that he was a poor labouring man with a large family entirely dependant on the trifling profits which his daily labour and industry might be able to make of his little garden, and hoped the Court would direct the plaintiff to accept the said one pound, ten shillings, in satisfaction for his tithes.

The defendant *Wolf* says, that he is a poor man; that the rent of his cottage and garden is only eight pounds a year; that he had refused to pay the plaintiff the tithes thereof, because he had not stated that they were conveyed to him by deed;

that the claim in the original bill having been founded on the agreement and not on the deed, he had demurred thereto, and that the demurrer was allowed; that since he had known the plaintiff's title he had offered to pay his tithes.

The defendant *Brook* admitted, that *J. White* was vicar, and left the plaintiffs to prove that they were entitled to the tithes under the deed poll. He also admitted, that from *Michaelmas* 1769 he had occupied a farm in the parish, together with a house, garden, and orchard; that he had kept thereon several cows which yielded milk and calves, but said that he had no goats or kids; and that during all the said time he paid no tithes for the same.

The defendant *Brook* says, that he holds a farm in the parish, but that he had never paid any tithes for the same.

The

GILBERT  
against  
BROOK.

The plaintiff replied to the defendant *Brook*; the defendant rejoined; and witnesses were examined only on the plaintiff's behalf.

The tithes decreed, and *Brook* ordered to pay the costs, *Wolf* being a pauper.

THE COURT, on hearing counsel, and reading the proofs, ordered the deputy remembrancer to take an account of what was due from the defendants respectively for small tithes, since the time the plaintiffs became entitled thereto under *the dead poll*; and *Brook* to pay the plaintiffs their costs, the defendant *Wolf* being a pauper.

THE COURT FULL,

MICH. TERM,  
35. GEO. 3.

HEATHCOTE against APPLETON.

Lancashire, 12th December 1774.

The rector of *Walton*, near *Liverpool*, in *Lancashire*, claims the tithes of the lordship of *Symond's Wood*.

THE rector of *Walton*, near *Liverpool*, in the county of *Lancashire*, claimed the great and small tithes of the lands occupied by the defendants, in the precinct or hamlet of *Symond's Wood*, particularly corn, cows, milk, calves, sheep, horses, barren and unprofitable cattle, hay, *Easter* offerings, hemp, potatoes, fruit, and garden stuff.

The defendant insists that a *modus* of 6d. a-year is payable at *Easter*, in lieu of all tithes of lands in the lordship of *Symond's Wood*;

The defendants admitted, that the plaintiff was rector and entitled to all the rectorial tithes yearly arising in the parish, or to some *modus* in lieu thereof, but they said, that the parish of *Walton* was also a vicarage, and that there was a vicar thereof, but whether he was entitled to any and what particular species of tithes therein they could not tell; that they had, ever since plaintiff had been rector, severally occupied certain farms in the township of *Symond's Wood*; that they held the same under leases for lives granted by an ancestor of *Lord Seston*, to whom the said lordship of *Symond's Wood* belonged; that no tithes in kind whatever, or *Easter* offerings, or any other ecclesiastical dues had ever been paid to or taken by any former rector from any of the occupiers of lands in the said township, but that they had from time to time, as long as the defendants, or as any man living could remember, invariably and constantly taken the sum of sixpence yearly at *Easter*, as a *modus* in lieu of all tithes, oblations, and ecclesiastical dues whatever, yearly arising on all and every or any of the farms and lands in the said township; and that the said *modus* had been received by the plaintiff's predecessors down to *Easter* 1768; and that they, with the other occupiers of lands therein, had been always ready and willing to pay the same; and they admitted, that they had refused to pay any tithes in kind. The defendants further admitted, that since the plaintiff had become rector of the parish, they had occupied the several messuages, farms, and lands particularised in their answer, and lying in the said township;

that a *modus* of 3d. a-year was payable for the tithes of anciently improved lands;

ship; and they set forth their values, and the quantities of corn, grass, hay, and other titheable matters they had had on their said farms and lands; and said, that the inhabitants and occupiers of the ancient cultivated lands in *Symond's Wood* had immemorially paid at *Easter* yearly, to the rector of *Walton*, three pounds as and for a *modus* or prescriptive payment, in lieu of all kind of tithes, and for all and every the messuages, yards, orchards, gardens, and lands, anciently cultivated and improved in *Symond's Wood* aforesaid, and also, after other lands there were taken in and cultivated, a like sum of three pounds *per annum*, for all kinds of tithes of such uncultivated lands, making together six pounds *per annum*. They further said, that according to the best information they had been able to obtain of ancient people, most of their messuages, &c. had been anciently, and before time of man's memory, improved and cultivated, and therefore they insisted they were not accountable to the plaintiff for any tithes in kind, *Easter* offerings, or other ecclesiastical dues claimed by the bill arising thereon; and that the plaintiff was not entitled to any recompence for the same, save the said *modus* or prescriptive sum of three pounds *per annum*, and which had been paid to the plaintiff's predecessors down to *Easter* 1768.

HEATHCOTE  
against  
APPLETON.

and 3l. a-year  
for uncultivated  
lands.

The plaintiff replied; the defendants rejoined; and witnesses were examined for the defendants only; and upon hearing counsel for both sides; and on reading an agreement, dated the third of *December* 1692, signed by several of the then inhabitants and occupiers of lands within the parish of *Walton*, touching a *modus* or composition of three pounds for tithes in the said parish; and reading the proofs taken in the cause;

The cause  
heard.

THE COURT declared, that the several *moduses*, as the same were stated in the answers of the defendants were not valid in law; and thereupon ordered the deputy remembrancer to take an account for the tithes of the several matters and things, and for *Easter* offerings, demanded by the bill, but without prejudice as to any other defence, the defendants may be advised at any time hereafter, to make in bar of the plaintiff's demands of such tithes in kind; the defendants to pay the plaintiff his costs, and further directions to be reserved until after report.

The *moduse*, as  
stated, declared  
to be bad, and  
tithes decreed  
with costs, but  
without prejudice.

WRAY against BARRINGTON; et c. Contra.

HILARY TERM  
15. GEO. 3.

*Essex*, 24th February 1775.

THE vicar of *King's Hatfield*, otherwise *Hatfield Broad Oak*, in the county of *Essex*, claimed all small tithes and *Easter* offerings arising therein in kind, particularly tithes in kind of wood fallen in certain woods called *Walter's Grove*, *Bass Spring*, lands called *Walter's Grove*, *Bass Spring*, *Row Wood*, and *Gariand Spring* in the *Brunsend Quarter* of the parish, and to all other small tithes arising therein, particularly the tithes of hops, wool, and apples. See *Trinity College v. Barrington*, twenty-fifth of *November* 1784, *Mich. Term*, 25, *Geo. 3.*

The vicar of  
*King's Hatfield*,  
is entitled to the  
tithe of wood  
cut in the wood-

*Row*



WRAY  
against  
BARRINGTON;  
et Contra.

*Row Wood, and Garland's Spring, in the Brunfend Quarter of the said parish; and stated, that the defendants Barrington, Thomason, and Green occupied large farms; and they had had thereon apples, clover-seed, hops, turnips, milk, calves, wool, fowls, and barren cattle; that the tithes in kind thereof, and Easter offerings, were due to the plaintiff; that the defendants, the master, fellows, and scholars of Trinity College, in Canterbury, were seised in fee of the said rectory impropriate; that the defendant Barrington was lessee of the great tithes thereof, but that neither he nor his ancestors had ever taken any tithes of wood or small tithes; and that the same belonged to him as vicar of the said parish; and he set forth the former suit, against Jocelyn for the tithes of his woods in the Brunfend Quarter (a); AND PRAYED, that the defendants Barrington, Green, and Thomason might respectively account with him for their titheable matters for the time aforesaid, and set out a full account thereof and pay him the single values of the same; that the master, fellows, and scholars of the college, and Barrington might set forth their several claims to the tithes of the underwood, cut as aforesaid, and to the small tithes; and that his right thereto might be established.*

The defendant Barrington and others admitted, that the plaintiff was vicar, but not that he was entitled to all small tithes and Easter offerings as demanded by the bill, or to the tithes of wood in the Brunfend Quarter of the parish; and said, that he had claimed and received the tithes of wool, apples, and hops, but that they and the former vicar had only received them by permission and not by right or endowment.

The defendant Barrington said, that he was owner of the woods in the Brunfend Quarter; that he had cut several of them, at such and such times, in such and such quantities, and to such and such values; that the said wood was a great and not a small tithe, and that therefore the plaintiff, as vicar, could not be entitled thereto: and he set forth his lease from the college, dated the twentieth of January 1761, and insisted, that by virtue thereof, he was entitled to all the great and small tithes in the said rectory, and to the tithes of wood there, except to such as the vicar could prove he was entitled to by endowment or prescription.

The defendants Green and Thomason said, that they had always paid their great and small tithes, except of wool, apples, and hops, to the defendant Barrington; and that they had compounded with him for all their tithes, at two shillings and sixpence in the pound.

The defendants Barrington, Green, and Thomason admitted, that they had the titheable matters stated in the bill, but insisted,

(a) Wray v Jocelyn, ante page 204.

that

that the vicar was not entitled either to them or to any other small tithes, or to the tithes of wood or *Easter* offerings, but that the same were vested in *the College*, and by lease in the defendant *Barrington*. And they said, that they believed that all the lands in the parish had been formerly part of the possessions of the dissolved monastery or priory of *Hatfield Regis*, or *Hatfield Broad Oak*, and were thereby exempted from the payment of any tithes.

WRAY  
against  
BARRINGTON,  
et c. Contra.

The defendant *Green* admitted, that the plaintiff had, in the year 1753, taken of his father tithe of wool, but had not received any *Easter* offerings, and he mentioned some other instances as to other tithes.

The defendant *Barrington* insisted, that the plaintiff, as vicar, was not entitled to any tithes or offerings; that the same had been heretofore granted by *Henry the Eighth* to *Trinity College*, in *Cambridge*; that the college, being so entitled, had demised the same to him by the said lease; and that he had in his custody several ancient writings dated in 1631, wherein the small tithes were mentioned to belong to him.

The defendants *the College* said, that the plaintiff was vicar of the parish; that he had served the cure there; and that by some endowment, usage, custom, or prescription they believed, that he was entitled to all the vicarial tithes arising therein, or to some composition for the same, but whether he was entitled to the tithes of wood in *the Brunfend Quarter* they could not tell. They further said, that they were owners of the rectory; that they had granted such lease of *the great tithes*, with such reservations, as stated in the bill; that *Barrington* was thereby entitled to all such tithes, as the vicar had not been endowed with or was entitled to by custom or prescription; that the former vicars had, they believed, claimed and received tithes of wood in *the Brunfend Quarter*, as well as small tithes, not out of grace or favour, but as their right; and that therefore they had in a former suit disclaimed, and did now disclaim all right to the tithes of wood there, and small tithes arising in the parish, apprehending that neither themselves nor their lessee were entitled thereto, but that they belonged to the plaintiff as vicar.

The plaintiff replied to the answer of the defendants *Barrington* and others; and witnesses were examined on both sides; and the cause was set down for hearing; and, by order obtained by the plaintiff in *the cross cause*, dated the twenty-second of *June* 1755, both causes were ordered to be heard together.

The defendant *Barrington* filed a *cross bill* against *H. Wray*, clerk, and *the College*, setting forth the lease, and insisting, that by virtue thereof he had received the tithes, thereby demised,

WRAY  
 against  
 BARRINGTON;  
 et c. Contina.

from the parishioners, as they became due, and had duly paid the reserved rents therein; that the defendant *Wray*, as vicar, had set up a claim to the small tithes of the parish, and to the tithe of wood in the *Brunsend Quarter*, and particularly in *Walter's Grove*, *Row Wood*, *Basf Spring*, and *Garlands Spring Wood*; that the said woods were *ancient demesne lands*, and had formerly been part of the ancient possessions of one of the king's of *England*, and exempt from the payment of tithes, except to the owner thereof; that he was, by virtue of the said lease from the said college, entitled to all the great and small tithes in the said parish, and to the tithes of the wood of his own woods, because they were *ancient demesne lands*, and the tithes thereof never granted away; that being his own woods the tithes of right belonged to him; that the several stipends, payments, and sums of money, stated in the grant, had been given by the priors of *Hatfield Regis* to the convent of *Saint Botolph*, in *Colchester*; and that he, *Barrington*, had covenanted to pay to the vicar of *Hatfield* ten pounds upon *Lady Day* and *Michaelmas Day*, in lieu of all tithes; that such payments and stipend had been accepted by the several vicars, in full satisfaction of all dues whatsoever, which the vicar could claim from the *College*, as appropriators of the said rectory, or from him; that he had been possessed of the great and small tithes of the said rectory above forty years (under the leases of the *College*) by a composition of two shillings and sixpence in the pound rent; and that the small tithes were included in such composition. He then stated, that he was seised in his *demesne as of fee* of the lordship or manor of *King's Hatfield*, or *Hatfield Broad Oak*, in the several manors of *Barrington Hall*, *Ballington*, *Matchin Barns*, *Brenth Hall*, and in the forest and chase of *Hatfield*, which were *demesne lands*; and that the same had been granted by former kings to his ancestor; that he was seised of the manor of *Prior's Hall*, and the priory of *King's Hatfield*, being an hamlet in the said parish, called the *Town Quarter*, and the lordship of *King's Hatfield*, granted to *Thomas Noke*, and by him conveyed to his, the plaintiff's ancestor and his heirs, and that the same had descended to the plaintiff; that the said manor and rectory, which belonged to the *College*, and had been demised by them to him, were formerly the possessions of the dissolved priory of *King's Hatfield*, and were *ancient demesne*; that he, as *lay impropriator*, was entitled to all tithes, both great and small, there; that the vicars were never instituted or inducted into the said vicarage, but held the same by *sequestration*; that if the former vicars had ever taken any tithes in the said parish, his, the plaintiff's, ancestors had permitted the same to be taken out of benevolence and not of right; that the *College* having demised to him "all tithes whatsoever," ought to support him in such right, but that they had disclaimed any right to such tithes, or to make him any satisfaction for the same, in case they had not well demised



mised them to him. The *cross bill* therefore prayed, that *Wray*, the vicar, might be decreed to account with the plaintiff *Barrington* for the small tithes, and for such money as he already had received for the tithes, and pay the same to him; that he might be restrained by injunction from receiving any more and deliver up all title deeds or other evidences relating to the rectory or manor; and that he, *Barrington*, might be quieted and established in his right to both the great and small tithes of the parish; that in case *the College* had not power to demise all such tithes, then that *the College* might be decreed to make him satisfaction for the same; and that it might be referred to the deputy remembrancer of the Court to settle the value of such recompence.

WRAY  
against  
BARRINGTON;  
et c. Contra.

The defendant *Wray* admitted the lease, and that there was a covenant therein to pay ten pounds, and insisted that he was by endowment, usage, custom, or prescription entitled, as vicar, to receive all the small tithes arising in the parish, and also the tithes in kind of wood in *the Brunsend Quarter*, and particularly of the woods before described. He said, that he claimed of the plaintiff the tithes of such woods; and that *the College* had no right to demise the same, or any of the vicarial tithes. He also admitted, that he had received the several sums of the occupiers for their said tithes, as set forth in the bill, and insisted that he had a right so to do; and he set forth the former suit and decree in this court, and insisted, that the several payments, mentioned to be paid to the vicar, were not given by the said priors or granted by *Henry the Eighth* to the vicar in consideration of tithes, but for the augmentation of the vicarage. He also said, that he believed the vicar of the parish had been endowed long before the dissolution of the monastery, and that there was a *manse* and a *glebe* belonging to the said vicarage; but that he could not tell when such endowment was made; but he insisted, that the immemorial payment of small tithes was evidence that the said endowment once existed. He further said, that he believed that the said *T. Noke* held the vicarage by induction, and not by sequestration; and that *Queen Anne's Bounty* never had been added thereto. He denied, that he had the keys of the chancel, or that he had taken out any books or deeds. He also said, that he believed that the woods in *the Brunsend Quarter* were *ancient demesne*, or formerly part of the ancient possessions of one of the kings of *England*, and therefore exempt from the payment of tithes. He admitted, that he had received the several sums stated in the bill for vicarial tithes, and insisted that he had a right so to do, and denied that the several payments, also mentioned in the bill, to the vicar for the time being, was in full satisfaction of his right of small tithes, or that the said small tithes belonged to the plaintiff as lessee to *the College*. He also admitted, that *Barrington* was seised of the lordship of *Hatfield Broad*

WRAY  
against  
BARRINGTON;  
et contra,

*Broad Oak*, and the several manors in the bill mentioned, but said, that he knew not that they were *ancient demesnes*, but that he had heard that some lands in the parish were called so. He also admitted, that the said premises, as also the rectory, had been formerly parcel of the possessions of the late dissolved monastery or priory of *King's Hatfield*, or *Hatfield Broad Oak*, but denied that they were *ancient demesne*, or that the plaintiff was entitled, as *lay impropriator*, to the small tithes there. He also admitted, that the said vicarage had been augmented by *Dr. Clarke's benefaction*, and not by the means or influence of the plaintiff; and he put the plaintiff upon the proof of the several matters and things alledged by his bill.

*The College* said, that a lease of the date, and to the effect, as in the bill mentioned, had been executed by *the College* to *Barrington*; that they had thereby granted all such tithes and rights as belonged to the said rectory, but denied that it was intended that *Barrington* should receive the small tithes arising in the parish, because they had always understood that not only *Easter* offerings but the small tithes of the whole parish belonged to the vicar; and that the small tithes were not included in the fine, rent, and payments payable to *the College*, for that it appeared by an ancient agreement, made the twenty-sixth year of *Henry the Eighth*, between the prior and convent of *Hatfield* and *Robert Noke*, then vicar of the said parish, that the said vicar should receive all small and mixt tithes arising in the said parish, of all denominations whatsoever; but *the College* insisted, that tithe wood was a great tithe and payable to the rector or his lessee, unless the vicar could shew an endowment, custom, or prescription to the contrary. They said, that the vicar had received his tithes of right and not out of grace and favour, and set forth the former suit, in which they disclaimed any right to the tithe of wood in *the Brunfend Quarter*; but denied that such disclaimer entitled the vicar to an account of the tithes against *Barrington* without shewing himself entitled thereto. *The College* further said, that they believed that *Barrington* had received a composition of two shillings and sixpence in the pound, but did not believe that such composition was paid as a satisfaction for small tithes; and they insisted, that *Barrington* could not understand that the payments made by *the College* and by him to the vicar were in lieu of tithes, because the ten pounds was part of twenty pounds a-year which *the College* paid as an augmentation of the vicarage, and not in lieu of the tithes the vicar had a right to. *The College* denied, that the small tithes of the parish belonged to *Barrington*, as their lessee, and said that they were ready to support and maintain the covenants and agreements in the lease with him, but that it was not understood that any other than *the great tithes* of the rectory were leased to him, and hoped the Court would  
not

not decree them to make him any satisfaction for the tithes which had been usually paid to and received by the vicar. The College further said, that they believed that the premises mentioned in the bill had been formerly the possessions of the monastery or dissolved priory of *King's Hatfield*, to which the rectory and parsonage formerly belonged; but denied, that *Barrington* was entitled, as *lay impropriator*, or in any other right whatever, except as their lessee.

WRAY  
against  
BARRINGTON;  
et c. Contra.

The plaintiff replied; the defendants rejoined; and witnesses were examined on the behalf of the plaintiff and the defendant *Wray* only; and the causes came on to be heard together, pursuant to the order of the twenty-third of *February* instant; when upon hearing counsel for all parties; and reading the following evidence on behalf of the plaintiff *Wray*; viz. the proceedings and the decree in the cause of *H. Wray v. Sir Conyers Jocelyn* and others<sup>(a)</sup>; the depositions on both sides in the present cause; a lease from the College to *Barrington*, dated the twentieth of *January* 1761, of the rectory impropriate of *Hatfield Broad Oak*; the *Bishop of Stokely's* confirmation from the register of the *Bishop of London*, dated the fifteenth of *February* 1532, of three pounds *per annum*, to be paid to the *Prior of Hatfield*; and on full debate of the matter;

THE COURT ordered the deputy remembrancer to take an account, without costs, of what was due from the defendants *Barrington, Green, and Thomasen* to the plaintiff *Wray* for the tithes of hops, wool, and apples, and also for *Easter* offerings, for the times demanded by the bill; and that they do severally pay to the plaintiff what shall be reported due.

THE COURT further ordered, by consent of the defendant *Wray*, that the cross bill be dismissed without costs, as to him, but that *Barrington* do pay the master, fellows, and scholars of the college of the *Holy and Undivided Trinity*, within the town and university of *Cambridge*, their costs in the said cross cause.

(a) Ante, page 204.

### THE BISHOP OF EXETER against SKINNER

*Devonshire, 28th February 1775.*

HILARY TERM  
15. GEO. 3.

THE bill stated, that in the year 1762, the plaintiff was consecrated *Bishop of Exeter*; that the rectory of *Shobrooke*, in the county of *Devon*, was then held by him in *commendam*, whilst he should live and continue *Bishop of Exeter*; that, as rector, he was entitled to all tithes, great and small, yearly arising therein; that the defendant had ever since occupied two mes-

The special manner in which the rector of *Shobrooke*, in *Devonshire*, is entitled to the great and small tithes of the parish, parsonage, and fruit.

pecially the tithes of wheat, barley, oats, milk, firewood, garden stuff,



THE BISHOP OF  
EXETER  
against  
SKINNER.

fuages, with the appurtenances; that he had paid a composition of six pounds, seven shillings *per annum* for the tithes thereof, the same being about two shillings in the pound of the annual value, and the general rate of composition in the parish; that in the year 1763 he applied to the curate, who usually received the tithes, and insisted on an abatement to be made in the said composition, by reason of some improvements he had made on his estates; that the said abatement was refused to be made, and that his tithes had from that time been payable in kind. The bill then set forth the several titheable matters which the defendant had upon his said messuages and lands; the tithes he had made to the plaintiff for the tithes thereof; and that *the Bishop* had refused to accept of the same. The bill then charged, that the usual mode of tithing wheat in the parish was for the farmer to bind it into sheaves and set it up in stiches or shocks of ten sheaves each; that the rector should have every tenth stich or shock, beginning at the gate, or end of the field next the gate where the farmer carried out his own wheat; that a bough should be put on every such tenth stich or shock; that if any odd stiches were left, the farmer should take a sheaf from each stich, and put them together with a bough thereon for the rector; that notwithstanding such custom the defendant tithed all his wheat in one year by setting out one sheaf out of every stich; and that the same being contrary to the custom was refused to be accepted of. The bill then stated, that the custom of tithing barley and oats in the parish was for the farmer to bind the same into sheaves, and then to gather them into heaps called dozens, consisting of twelve sheaves each; that the rector was to have every tenth heap for tithes; that if there were any odd dozens a sheaf was to be taken out of each and put together for the rector, with boughs placed thereon like as for wheat; that the defendant having in some of the said years tithed the said wheat, oats, and barley in an unfair way, by setting out one sheaf out of every stich and dozen, the same were not accepted; and that he had also refused to account for his other titheable matters and things in a fair manner. The bill therefore prayed an account and payment.

The defendant admitted that the plaintiff was *Bishop of Exeter*, and rector *in commendam*; that he was thereby entitled to all tithes, both great and small, arising in the parish; that he, the defendant, was occupier of two messuages and lands in the said parish; that it was usual for the curate thereof to collect the tithes; but he denied that he had ever entered into any composition for his tithes at six pounds, seven shillings a-year, as it was more than he ought to pay, but that he did for peace sake pay the same for some years; and that imagining himself overcharged he desired an abatement of a guinea a-year, and the

the same being refused he had ever since fairly paid or tendered his tithes either in kind, or by ancient *modus*es for the same. He admitted, that in the year 1763 he had sixteen lambs fallen, and that the plaintiff was by custom entitled to and had received the third lamb for the tithe thereof; but he insisted that he was not entitled to more than one halfpenny for the tithe of each of the six odd lambs, and that having refused to accept the same the tithes of the said six lambs remained unpaid. He set forth his titheable matters, and what tithes had been received and what remained unpaid for the following years. He denied the custom of tithing of wheat, as stated in the bill; and said, that the immemorial custom of the parish was to take the tenth sheaf, to begin at the end of the field next to the gate from whence the farmer carried out his nine parts, and so to continue to the end of the field; that if the farmer set up his nine parts he was to set up the tenth part also; that he therefore set out his sheaves and gave notice thereof according to custom, but the plaintiff refused to take the tithes thereof away, and that they rotted on the ground. He also denied the custom of tithing barley and oats, as stated in the bill, and insisted that it was the same as in tithing wheat; and he set forth the quantity of wheat, barley, and oats, and the other titheable matters which he had had. He also stated a *modus* of elevenpence for every cow milked in the parish, in lieu of the tithe of milk; another *modus* of one penny for every hearth or wood penny; also a garden penny and a hoard penny, and said, that the wood penny was in lieu of all wood burnt, consumed, or sold. He insisted, that the several tenders, mentioned in his answer, were the full values of the tithes for which they were made; and that they had been refused with a view to injure and oppress him. He denied, that he had ever refused to disclose the particulars of his titheable matters, as suggested in the bill, and by his answer offered to pay seven pounds, eighteen shillings, and sixpence to the plaintiff, as and for the full value of the small tithes which had arisen on the said premises, during the several years in the bill mentioned.

THE BISHOP OF  
EXETER  
against  
SKINNER.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel; and reading the several proofs taken in the cause;

THE COURT, which was full, ordered, by the consent of counsel on both sides, the defendant to pay the seven pounds, eighteen shillings, and sixpence, the *Bishop of Exeter* agreeing, for the sake of peace and to prevent further trouble and expence, to accept the same, in full of the tithes demanded by the bill, although a much larger sum was due to him for the same, with costs of suit.

HILARY TERM  
15. GEO. 3.

PARRY *against* THOMAS.

*Carmarthenshire, 28th February 1775.*

The impropriator of the parish of *St. Peter's*, in the borough of *Carmarthen*, is entitled to the tithes in kind for the farm and land called *Conny Tenement*.

THE impropriator of *Saint Peter's*, in the county of *Carmarthen*, claimed the great and small tithes which had arisen on *Conny Tenement* for eight years last past.

The defendant insisted, that the premises called *Conny Tenement* were wholly exempt from the payment of tithes either in kind or by *modus*, for that they were parcel of the lands which formerly belonged to the priory of *Saint Peter*; that the said lands had been ever exempt from the payment of tithes at the time of passing the statute of 31. *Hen. 8.* and that such exemption and discharge being confirmed by that statute, the said lands continued exempt therefrom; that he had paid the tithes for the other lands he occupied; and he set forth the quantity of land *Conny Tenement* contained; but said, he could not set forth the corn he had reaped therefrom, he having kept no account thereof; and said, that he occupied the same as undertenant to *Jesus College, Oxford*.

The plaintiff replied; the defendant rejoined; and the cause being at issue, and publication passed, it came on to be heard; and now upon hearing counsel for the plaintiff; and no counsel appearing for the defendant; and an affidavit of service of *sub-pœna* to hear judgment, and also the bill being read;

THE COURT ordered the deputy remembrancer to take an account of what was due for the several titheable matters and things which had arisen on the said tenement and lands called *Conny*, in the parish of *Saint Peter*, within the borough of *Carmarthen*, in the bill mentioned, during the time demanded by the bill, unless cause were shewn to the contrary; and on the third of *July 1775*, no cause having been shewn, the decree of the twenty-eighth day of *February* was made absolute.

HILARY TERM  
15. GEO. 3.

CLARKE *against* ROADS.

*Hertfordshire, 2d March 1775.*

The rector of *Elstree*, in *Hertfordshire*, is entitled to the great and small tithes of the parish and of *Barham Wood Common* in kind.

See another cause  
Easter 20. Geo.  
3.

THE rector of *Elstree*, in the county of *Hertford*, claimed all tithes, both great and small arising therein in kind; and stated, that there was within the said parish a large extent of good pasture land called *Barham Wood Common*, consisting of one thousand acres; a quantity exceeding all the other land in the parish; that according to the custom of the *Manor of Barham Wood*, otherwise *Eoreham Park*, the said common was only to be stocked with cows, breeding cattle, dry cattle of the female kind, geldings, and brood mares, but not with sheep or with



with any other cattle whatever; that the defendants occupied certain messuages, lands, yards, orchards, and gardens in the parish, and had kept sheep, lambs, hogs, pigeons, poultry, fruit, herbs, and bees thereon; that they had kept upon the said common, and on their said land, several geldings, breeding and milch cows, brood mares, and divers other kind of cattle which had produced milk, calves, and colts; that they had made several thousands of faggots from their said lands; that they had not since *Michaelmas* 1758 accounted with him for his tithes of the several matters aforesaid, or any small tithes, but had pretended, that he was not entitled to tithes in kind, but that there were certain *modus*es payable in lieu thereof. The plaintiff then charged that there were no *modus*es in the parish; and insisted, that he was also entitled to an herbage or agistment tithe of all barren and unprofitable cattle depastured on *Barham Wood Common* grounds, which the defendants severally enjoyed in the parish. He further said, that when he and his predecessors received two shillings in the pound, as a composition, in lieu of all great and small tithes, or one shilling in the pound, in lieu of small tithes, he never paid any *land tax*, in respect of such tithes, but that the parish having assessed him to the *land tax*, he at *Michaelmas* 1758 gave them notice that he would take his tithes in kind for the future; that they had since that time permitted him to take the tithes of hay in kind; and that the agreement to take two shillings in the pound, as aforesaid, was only during pleasure. The bill therefore prayed an account of all the said tithes since *Michaelmas* 1758.

The defendants admitted, that the plaintiff was rector of the parish, and entitled to the tithes thereof, or to some *modus* in lieu of the same. They also admitted there was a common of pasture therein called *Barham Wood*; that there was a custom that the inhabitants should not turn any sheep upon the said common, but that they might and had been accustomed to depasture any other sort of cattle thereon; that they, the defendants, had rented lands in *Elstree*, and also in the parishes of *Aldenham* and *Edgware*; and they set forth their titheable matters, and said, that neither the plaintiff, nor any rector of *Elstree*, had any right to tithes in kind of any of the titheable matters aforesaid, for that there was a *modus* to pay an halfpenny to the rector for every sheep wintered in the parish, and not shorn therein, but that if the sheep were shorn therein then the rector was entitled to the tithe wool of such sheep in kind: that there was another *modus* to pay a halfpenny to the rector for every lamb fallen in the parish, if sold before *Saint Mark's Day*, and the same if the lambs fallen were not a titheable number, but that if the lambs fallen therein were depastured therein on or over *Saint Mark's Day*, and the number amounted to ten, that then the rector was entitled to tithes in kind: that there was another *modus* to pay fourpence

CLARK  
against  
ROADS.

pence a cow, in lieu of the tithes of calves and milk : that there was another *modus* to pay twopence a mare where mares were wholly kept for breeding, in lieu of the tithe of every colt of such breeding mare : that there was another *modus* to pay one penny for every cock, and one halfpenny for every hen, on or about *Easter Day* in every year : another *modus* to pay fourpence for every orchard, and one penny for every garden, in lieu of tithe taken in kind ; but that to avoid further trouble they had offered him double the said sums ; and they said, that the greater part of the land held by them respectively in the said parish was meadow, which had been commonly mowed first and afterwards fed with cattle.

The plaintiff replied ; the defendants rejoined ; and soon afterwards the defendants *William Roads* and *Mary Cockman* died, and the suit was revived against *William Wilkinfon* and *J. Wright*, the executors, who appeared and answered ; the plaintiff replied to their answers ; the defendants rejoined ; and witnesses were examined for both parties ; and upon hearing counsel for all parties, except *Thomas Cockman* ; and reading an affidavit of the service of *subpoena* to hear judgment ; and his answer ; and the plaintiff declaring, that as the said defendants had failed in proving the several *moduses*, he was willing to waive entering into an account for the value of the said *Mary Roads'* small tithes, and to accept the said two several yearly sums of fifteen shillings, and fifteen shillings, mentioned in her answer, as the value of the small tithes in kind due from her for the years 1759 and 1760 ;

THE COURT ordered the executors of *Mary Roads* to pay the same ; and the defendant *Thomas Cockman* to account for the value of the several small tithes which had arisen on the lands in his occupation in the said parish, during the time demanded by the bill, with costs, unless cause were shewn to the contrary ; and no cause being shewn, the decree was, on the twelfth of *December* 1775, made absolute.

THE COURT FULL.

EASTER TERM  
35 GEO. 3.

WILSON against HOOPER.

Somersetshire, 8th May 1775.

The vicar of *North Curry*, in *Somersetshire*, is entitled to the tithes, except of milk and garden stuff, in kind.

See another cause  
Hilary Term, 21.  
Geo. 3.

THE vicar of *North Curry*, with the chapelries of *West Hatch* and *Stoke Gregory*, otherwise *Stoke Saint Gregory*, in the county of *Somerset*, thereto annexed, claimed the small tithes in kind which had yearly arisen there on the lands of the defendants, for ten years past.

The defendant *Hooper* said, that the plaintiff was, he believed, presented to the vicarage and chapelries, at the time mentioned in the bill ; but that he had not, either by himself or by a curate, duly performed the cure thereof, for that, especially of late  
I years,

years, he had seldom resided therein, and had wholly omitted divine service in the said church and chapelries for twelve months together, since *June* 1760; that he had frequently married persons in the said parish without publishing the banns or having any licence; and that he was not entitled to the tithes in kind claimed by the bill; for that the several *modus*es following were payable at *Easter* in lieu thereof, *viz.* twopence for every summer milch cow, in lieu of tithe milk; three halfpence for every heifer and winter milch cow, in lieu of tithe milk; one penny for every garden, in lieu of the tithes of the garden stuff growing therein; twopence for every calf fallen under seven, and if seven, eight, nine, or ten, then eight shillings, in lieu of tithes of calves; eight shillings for every other tenth calf after the first ten; twopence for every odd calf under seven; and if any or either of the said calves under seven were sold, to pay the tenth part of the money arising by such sale, or if killed, the tenth part of the value of such calf, and if reared, twopence for each calf; one halfpenny for every lamb fallen in the parish, under seven, and if seven, eight, nine, or ten, the sum of two shillings and sixpence, in lieu of tithe lambs, and if seven, eight, nine, or ten, after the first ten, the like sum of two shillings and sixpence; and for every odd lamb, under seven, after the first ten, one halfpenny, which sums were also paid in discharge of tithe wool of such lambs, growing and increasing from the fall to the shearing thereof, and therefore nothing further was paid the vicar for the tithe of wool and lambs; for seven, eight, nine, or ten pigs fallen in the said parish the sum of two shillings and sixpence, in lieu of tithe pigs; and for every tenth pig, after the first ten, the like sum of two shillings and sixpence; and for every odd pig, if seven in number and under ten, the like sum of two shillings and sixpence; for each and every colt fallen in the said parish, under seven, twopence; and if seven, eight, nine, or ten, then to pay the sum of one pound, one shilling, in lieu of the tithe of colts; and for every other tenth colt, after the first ten, the like sum of one pound, one shilling; and after the first ten, if there were seven, eight, or nine, the like sum of one pound, one shilling; and for every colt, under seven, after the first ten, twopence; and if any of the said odd colts, under seven, should be sold under one year old, the tenth part of the money arising by such sale; that two shillings had been usually paid the vicar of the said parish and chapelries, for every score of sheep shorn within the same, in lieu of all tithes thereof, and so in proportion for any greater or lesser number; and for the growth of wool of sheep not shorn therein, one penny a score by the week had been usually paid for the tithe of such sheep and so in proportion for any greater or lesser number; one shillings for every hoghead of cyder, in lieu of tithes of apples grown within the said parish and chapelries; and twopence for an unmarried man or woman, or fourpence for a married man and his wife, had been usually paid the said vicar,

WILSON  
against  
HOOPER.



WILSON  
against  
HOOPER.

vicar, in lieu of *Easter offerings*, and nothing otherwise for any person of sixteen years of age or upwards, in the family of such man or woman.

The defendants *Collings* and others answered to the like effect.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides; and reading several depositions; and an endowment of the vicarage and chapelries, dated the third of the nones of *October* 1234; and upon full debate of the matter;

THE COURT ordered all the defendants, except *H. Rycombe*, to account for all the tithes demanded by the bill, from the date of the last receipt given by the plaintiff to them in the year 1768, and pay what should appear due thereon, with costs, the bill, as to so much as claimed satisfaction for tithes preceding such last receipt, to be dismissed with costs.

THE COURT also ordered *H. Rycombe* to account for the tithe of all dry, barren, and unprofitable cattle, depastured by him in the said parish or chapelries, since the time of his last receipt, and pay what should appear due, with costs; the bill, as to such tithes, before the date of such receipt, to be dismissed with costs; the tithes in kind for gardens waived by the plaintiff, to be without costs, and one penny a year paid in lieu thereof.

THE COURT also ordered the following issue, in a feigned action, to be brought against *Hooper, Collins, and Vaining*, to try, "Whether the plaintiff, as vicar of the parish of *North Curry*, and chapelries of *West Hatch* and *Stoke Gregory*, otherwise *Stoke Saint Gregory*, in the county of *Somerset*, was entitled to the tithe in kind of all milk arising from the defendants cows, and other the inhabitants of the said parish and chapelries, or to any and what *modus* or customary payment in lieu thereof." The judge at liberty to indorse, &c. and further directions to be reserved till after report.

After making the above decree, the plaintiff *Wilson* waived his demand of tithe milk in kind, and thereby admitted, that there were such *moduses* in lieu thereof.

EASTER TERM  
15. GEO. 3.

ABBOT against WILKINSON.

Norfolk, 22d May 1775.

Therefor of the  
consolidated pa-  
rishes of *Burnham*  
*Wishgate* and  
*Ulp*, in *Norfolk*, claims of the defendant the owner of *the Hall Farm*, in the said parish, certain small tithes, from the time of his induction on the fourth of *March* 1766, and also the restoration of ninety acres of glebe land lying in the open fields, and which the defendant had converted to his own use.  
S. C. 7. Bro. P. C. 518.

*Burnham*

*Barham Westgate* and *Ulph*, in the county of *Norfolk*; that he had ever since such his induction been rector and incumbent thereof; that he had thereby become entitled to all the glebe lands belonging to the said rectory and parishes, and also to all the great and small tithes, *moduses*, compositions, and customary payments in lieu of tithes, *Easter* offerings, and all other ecclesiastical dues and duties arising in the said consolidated parishes, or either of them or the titheable places thereof; that the glebe lands belonging to the said consolidated parishes and rectory wholly consisted of a great number of small pieces of land lying dispersedly in the common fields within the said parishes or one of them, containing upwards of one hundred acres; that the said pieces or parcels of land had formerly certain marks, metes, and boundaries to ascertain the width, breadth, extent, and situation thereof; that ever since the plaintiff's induction and for some years before, the defendant had been owner and proprietor of a considerable estate lying within the said consolidated parishes, or one of them, of one thousand pounds *per annum*, particularly of a great number of pieces or parcels of land lying dispersedly in the said open and common fields, intermixed with or adjoining to all or most of the said glebe lands; that he let out part of his said estate and lands to tenants; that he kept the other part thereof in his own occupation and manurance; that taking advantage of the negligence and inattention of former rectors, and of the plaintiff's recent residence in the rectory, and his ignorance of the particular lands which constituted the glebe lands thereof, and of his, the defendant, having formerly rented the same, he had got the same into his hands and possession, and had let them to several of his tenants, with other lands of his own, or had kept them, or part of them, in his own occupation, particularly those which laid near to his own lands, and had ploughed them up, defaced, destroyed, or taken away the several metes and marks by which they were ascertained and bounded; that by reason thereof, they had passed through a variety of hands and had, since any terrier was made or taken thereof, been the property of different persons, whereby the plaintiff was unable to discover or distinguish such glebe lands, or to bring any ejectment for the recovering the possession thereof; and that he the defendant had never since the plaintiff's induction thereto paid him any rent, or made him any satisfaction for the use of the said glebe lands, so held by him or his tenants. The bill then further stated, that ever since the plaintiff had been rector of the said parishes the defendant had occupied a large house, garden, orchard, farm, and lands lying within the same, or the titheable places thereof, and had yearly grown, fed, depastured, mown, cut down, and gathered clover, saint foin, rye grass, and other grass seeds, and turnips; that he had also kept, agisted, fed, and depastured in and upon such lands and grounds within the said

ABROT  
against  
WILKINSON.

ABBOT  
against  
WILKINSON.

said parishes, or the titheable places thereof, cows, sheep, horses, oxen, barren and unprofitable cattle; that he had milch cows which had produced calves and milk; sows which had littered pigs; ducks, hens, and other poultry, which had produced eggs, ducklings, chickens, and divers other titheable matters which were esteemed small tithes; that he had also in his house and family, a number of persons, servants, and others for whom, as well as for himself, he ought to have paid *Easter* offerings. The bill then further stated, that the plaintiff had frequently applied to him to discover, set out, and distinguish by proper metes, marks, and boundaries the several pieces and parcels of glebe lands so held and enjoyed by him, and which he either let out or kept in his own hands, and either to deliver up the possession thereof, or to account with and pay the plaintiff a reasonable rent or satisfaction for the same; to discover the several titheable matters before mentioned, which he had and kept within the said parishes or titheable places thereof, since the plaintiff had been rector thereof, and to set out, satisfy, and pay the plaintiff the value of such tithes and *Easter* offerings, but which he had refused to do. The bill therefore prayed, that the defendant might be decreed to pay the plaintiff a reasonable rent or other satisfaction for the said lands; to deliver up to the plaintiff the possession thereof, and the several terriers, maps, plans, and field books thereto belonging; to restore, set up, or make anew the several proper metes, boundaries, and other marks thereon, which had been ploughed up, defaced, taken down, or destroyed by him, or by his order or procurement; and to account for all the small tithes arising upon the house, farm, and lands in his occupation, and for *Easter* offerings, and other ecclesiastical dues which had become due since the plaintiff had been rector of the said parishes and pay him the same.

The defendant denies that either he or his tenants are in possession of any of the glebe lands belonging to the said parishes; states a terrier in which they are described;

The defendant admitted, that the plaintiff was rector of the said parishes, and entitled to all *the glebe lands*, tithes, *Easter* offerings, and other ecclesiastical dues arising therein; but he denied, that *the glebe lands* thereto belonging did, to his knowledge, lie dispersedly in the common fields; that they had certain marks, metes, and boundaries to ascertain the width, breadth, extent, and situation thereof; and said, that he had seen a copy of a *terrier* of *the glebe lands*, dated the twenty-third of *June* 1753 signed by the then rector and churchwardens, which made the glebe lands of the said parishes forty-nine acres, two roods, and twenty perches, and described them to lay dispersedly in the open and common fields; that such terrier might be right for any thing he knew to contrary, but that he could form no belief upon the subject. He admitted, that for several years past he had been owner of a considerable estate within the said parishes, and of a great number of pieces or parcels of land



land lying dispersedly in the said open common fields, but whether they were intermixed with or adjoining to *the glebe lands*, or any of them he said he could not set forth. He also admitted, that he let out part of his estate to tenants; and that he kept the other part in his own possession and manurance; but he denied, that he had got into his possession, or let out to tenants with other lands of his own, or kept in his own occupation, any number of pieces or parcels of the glebe lands, or that he had ploughed or defaced, or otherwise destroyed or taken away, the several metes and marks by which the same were formerly or at any time ascertained or bounded, or that he had caused or procured the same to be so done, or that he had otherwise consented thereto; or that there were there, to his knowledge or belief, any marks, metes, or bounds of the lands, either in his occupation or that of his tenants, that were or had been discernable or distinguishable by which it might appear that such lands were glebe lands; or that either he or his tenants were in possession of any such, or that he claimed title to any lands, but those which had been fairly and *bona fide* conveyed to him for a good and valuable consideration; and he admitted, that he had never paid the plaintiff any rent for any glebe lands. He further said, that long before, and ever since the plaintiff had been rector of the said parishes, he had occupied a large house, garden, orchard, farm, and lands, and had, from time to time, had thereon the several matters in the bill mentioned; that the plaintiff had, during all that time, taken all the tithes in kind he had ever claimed; that the defendant had never refused to deliver him the just and true tithe; that neither the plaintiff nor any of his predecessors had ever demanded the tithes of calves, milk, pigs, eggs, or poultry; and that he had not paid either such tithes or the tithes of turnips that had been always fed by sheep, such sheep having previously paid the tithes of lambs and wool. He further said, that he had yearly fed a few bullocks on his turnips, for the agistment whereof he had always been ready to pay, if it had been properly demanded. He further said, that he had paid the late incumbent twelve pounds a-year, as a *composition*, in lieu of the tithes of *the Hall Farm*; and that all the lands he then held and occupied belonged thereto. He admitted, that he had several persons in his family for whom *Easter offerings* might become due, but he submitted, that an *Easter offering* was a personal duty, and not a tax payable by the master of a family, but he said, that he was willing to pay the same as if they had been due for himself. He denied, that the plaintiff had ever applied to him in a friendly manner touching the matters in the bill; and said, that about the third of *January* 1770, he received a letter from the plaintiff in the words and figures following: "Sir, As soon as you conveniently can, I should be obliged to you for a positive answer,

manding the payment of tithes, and the restoration of the glebe lands.

in

ABBOT  
against  
WILKINSON.

denies that he  
had removed  
land marks or  
boundaries;

admits that he  
occupied *the Hall  
Farm*;

says, that the  
tithes of calves,  
milk, pigs, eggs,  
and poultry had  
never been de-  
manded;  
that no tithes are  
due for turnips  
fed by sheep  
which had paid  
tithes of lambs  
and wool;

that *Easter of-  
ferings* are per-  
sonal dues;

and states a let-  
ter from the  
plaintiff, de-

ABBOT  
against  
WILKINSON.

and the several  
terriers and pa-  
pers in his cus-  
tody relating to  
the same.

" in writing, to the following questions: Will you or will you  
" not give me a just account of and pay me for the tithe of  
" turnips and other small tithes, such as pigs, cows, poultry, &c.  
" which have become due from the death of *Mr. Smith* to  
" this present time, and yet remain unpaid; and will you order  
" your servants, for the future to give proper notice when all  
" such tithes become due; will you or will you not set out any  
" abuttal the ninety-seven acres of glebe land, belonging to  
" me, as rector of *Westgate* and *Ulph*, and which are now in-  
" termixed with the lands of your estate, and in the possession of  
" you or your tenants; and will you pay the arrears of rent  
" due for the said land, from the death of *Mr. Smith* to this  
" present time; if you do not chuse to acknowledge the quan-  
" tity of glebe land above mentioned, how many acres are you  
" willing to acknowledge, and set out, and abuttal, and pay  
" the arrears of rents; for a plain and immediate answer to  
" these questions, you will oblige your humble servant. BRYAN  
" ABBOT, *Burnham*, 3d January 1770." He denied, that he  
had ever pretended there were no glebe lands belonging to the  
said rectory, but insisted, that he did not wrongfully occupy the  
same, either by himself or his tenants; and that if he was in  
possession of any such, he did not become possessed thereof by  
means of any exchanges for other lands, either before or since  
he came into possession of his said estate. He further said, he  
had searched all his papers and writings, and could not find  
any terrier whereby to distinguish the glebe lands belonging to  
the said rectory, but that he had found a map or plan of the  
consolidated parishes, which appeared to have been made in  
the year 1648, and he set forth the description thereof, but he  
said, that he could not tell whether the same was accurately  
made. He also said, that he had likewise found a field book  
and two copies of terriers, one dated the twenty-seventh of  
*July* 1747, and the other the twenty-third of *June* 1753, but  
that he could not tell whether such book or terriers were accu-  
rately made, but that if they were the names of the several pieces  
or parcels of land were so much changed and intermixed with  
each other, that he was not able to form a judgment where such  
lands then lay, or were situated, or in whose possession or occu-  
pation the same or any of them were; and he fully set forth the  
lands in his occupation, and in his tenants, with the names of  
those to whom he had let the same, and an exact account of  
his titheable matters.

The cause  
heard.

The plaintiff replied; the defendant rejoined; and wit-  
nesses were examined on both sides; and upon hearing the  
cause several days; and the defendant's counsel objecting for  
want of parties; and the said objection being over-ruled;  
and upon reading the depositions of several witnesses for the  
plaintiff; the answers of the defendant; a map of the parish of  
*Burnham*

*Burnham Saint Mary's Burnham Ulph*; two terriers of the glebe lands one dated the fifth of *June* 1706, and another, dated the seventh of *July* 1716; an assessment made for the poor of *Burnham Westgate* the first of *April* 1770; and upon reading, for the defendant, several depositions taken on his behalf, THE COURT took time to consider of the matter before them; and the cause coming on again this day;

ABBOT  
against  
WILKINSON.

The case adjourned.

THE COURT ordered a trial at law upon the following issue, to wit, "Whether the defendant *Pinkney Wilkinson*, by himself or his tenants, was in possession of ninety acres of glebe lands belonging to the plaintiff, as rector of the consolidated parishes of *Burnham Saint Mary's*, otherwise *Burnham Westgate* and *Ulph*, in the county of *Norfolk*." And if the jury should find that any more or less than ninety acres of glebe lands be in the possession of the said defendant or his tenants, that the same be indorsed on the *posse*. The plaintiff in this suit to be plaintiff at law; the action to be tried by a *special jury*; and that a view of the premises be had.

An issue directed to try what quantity, if any, of the glebe lands was in the defendant's possession.

THE COURT ordered the deputy remembrancer to take an account of what was due to the plaintiff from the defendant for all the small tithes, *Easter* offerings, and other ecclesiastical dues, which had arisen on his farm and lands called *the Hall Farm*, and on the other farm in his occupation; in the pleadings mentioned, during the time demanded by the bill; and further directions to be reserved.

The defendant ordered to account for the small tithes and *Easter* offerings.

The issue was accordingly tried, and the jurors found, that the defendant *P. Wilkinson*, by himself or his tenants, was in possession of eighty-four acres, part of the ninety acres of glebe land before-mentioned, belonging to the plaintiff, as rector of the said consolidated parishes; and that as to the six acres, residue of the said ninety acres, he was not, either by himself, or his tenants, in possession thereof.

The issue tried and a verdict found that there were eighty-four acres of the glebe in the defendant's possession.

On the fifteenth of *November* 1776, the defendant moved for a new trial, and a rule was granted to shew cause; and on the fourth of *February* 1777, on cause being shewn on Mr. BARON PERRY's report, the Court refused to grant a new trial. The defendant, on the fourteenth of *May* 1777, appealed to the house of lords against the order of the court of exchequer refusing a new trial of the above issue; but on the thirty-first of *May* 1777, the said appeal was dismissed with one hundred and fifty pounds costs.

The Court refuse a new trial;

The defendant appeals to the house of lords, and the appeal is dismissed.

On the fifth of *June* 1777, the cause came again before the court of exchequer, to be heard on the *posse*.

The cause heard on the *posse*.

THE COURT ordered a commission to issue, returnable on the first day of the ensuing *Michaelmas Term*, to set out and ascer-

A commission issued to set out the eighty-four in lieu thereof.

acres of glebe lands, or, if not distinguishable, other lands



ABBOT  
against  
WILKINSON.

tain the eighty-four acres of glebe land; or, in case the commissioners could not distinguish the indentical lands, eighty-four acres in lieu thereof, or so much thereof, as they could not so distinguish, in lieu of such glebe land.

The defendant  
to pay costs to  
the twenty-se-  
cond of May  
1775.

THE COURT further ordered the defendant to pay the plaintiff his costs, both at law and in this court, from the foot of the former decree, dated the twenty-second of May 1775, to this time; further directions and subsequent costs, to be reserved until after the return of the commission.

The commission  
executed, certi-  
fied, and return-  
ed, together with  
the remembran-  
cer's report.  
The cause fur-  
ther heard on the  
return.

The commission was duly executed and returned into the court, with a certificate thereof under the hands and seals of the commissioners, dated the first of November 1777, as fully stated in the decree; on the second of February 1778, the deputy made his report; on the fifth of February the cause came on to be further heard upon the return of the commission, the commissioners' certificate, and the deputy remembrancer's report; when upon hearing counsel; and reading the decrees; the commission; the certificate; the report; and upon full debate of the matter;

The defendant  
ordered to pay  
342l. 6s. 1d. for  
tithes and costs  
to the twenty-  
second of May  
1775.

THE COURT ordered the report to be confirmed, and the defendant to pay three hundred and forty-two pounds, six shillings, and one penny, for the small tithes, Easter offerings, and ecclesiastical dues; and his costs to the twenty-second of May 1775; viz. for small tithes, Easter offerings, and ecclesiastical dues one hundred and twenty pounds, six shillings, and for his taxed costs two hundred and twenty-two pounds, and one penny.

The certificate  
of the commission  
confirmed, and  
the defendant or-  
dered to account  
for the annual  
value of the  
eighty-four acres  
from the fourth  
of March 1766,  
and to pay the  
same with sub-  
sequent costs.

THE COURT likewise ordered the certificate to be ratified and confirmed; and the deputy remembrancer to take an account of the annual value of the eighty-four acres of glebe land so set out and ascertained as aforesaid, from the fourth of March 1766, being the time when the plaintiff was instituted and inducted into the said consolidated parishes, to the present time, and the defendant to pay what should be so found due, with his costs in respect thereof, and also subsequent costs of this suit, from the date of the former decree of the fifth of June 1777; and to forthwith deliver up to the plaintiff the possession of the said eighty-four acres of glebe land, as the same was so set out and ascertained.

BORLASE *against* BATTEN.EASTER TERM,  
15. GEO. 3.*Cornwall, 22d May 1775.*

THE bill stated, that the plaintiff then was, and for twelve years past had been, vicar of the parish of *Madron*, in the county of *Cornwall*; that he was by the custom of the said parish entitled to the tithes in kind of all sorts of sea fish taken or caught by or belonging to any of the parishioners or inhabitants of the said parish, or by or with any seynes, nets, or boats belonging to the said parish, or to a satisfaction in money in lieu thereof, as the same should arise and become due; that in the year 1753 there was a boat, seynes, and nets fitted out at *Penzance*, in the said parish, called *the Mount Content*, in which the defendants, or those under whom they claimed, were co-partners; that the said boat, seynes, and nets belonged to *Penzance*; that it went from thence to fish; that it was worked by the inhabitants of *Madron*; that the fish caught thereby were landed therein; and that the tithes thereof were there paid; that three times in every year during the said time there had been in or near *Madron*, and the sea coast there, seasons used for the catching of fish, and particularly of *pilchards*; that during those seasons quantities had been taken with seynes, nets, and boats, belonging to the said parish; that the whole or the greater part thereof had been landed therein; and that the tithes thereof, or a satisfaction for the same ought to have been rendered to the plaintiff; that for the better carrying on the said fishery, it was usual for the several persons to join as partners in different shares, to buy and provide seynes, nets, boats, and other necessaries, and to hire servants to be employed therein; that in such case the fish caught was, after the payment of tithes, divided amongst them according to their respective shares; that such boats had different names to distinguish them from other boats; and that they are said to belong to their respective parish or place; that the defendant *Batten* and others, as co-partners, about twelve years ago, fitted out at *Penzance* for the said fishery divers seynes, nets, and boats in the fishing seasons, and had therewith caught in each season great quantities of *pilchards*, and landed the same in the parish of *Madron*, the tithes whereof ought to have been paid to the plaintiff in kind; that they had respectively had, during the said time, and then were concerned in as partners, different shares in the craft called *the Mount Content*, and in several seynes, nets, boats, and other things used in carrying on the said fishery for *pilchards* from *Penzance*; that they contributed towards the expence thereof, and were proprietors of the greater part thereof, and as such had respectively become entitled to and had received to their own use, during such fishing seasons in each year, a number of *pilchards* and other sorts of fish, which were put on shore at the

The vicar of *Madron*, in *Cornwall*, is, by the custom of the parish, entitled to tithes in kind of all sea fish caught by the boats, seynes, and nets belonging to the said parish; and all boats, seynes, or nets which are housed or moored in the said parish during the intervals of the fishing seasons, are reputed and taken to belong thereto.

BORLASE  
against  
BATTEN.

parish of *Madron*, or other places near thereto, the tithes of which ought to have been paid in kind to the plaintiff as vicar of *Madron*, or he ought to have received a satisfaction for the same; that he had several times applied to the defendants respectively to come to an account with him for the tithes of the said fish or to make him a reasonable satisfaction for the same, but which they had refused, under pretence he was not entitled thereto. The bill then charged, that even when boats and craft were kept, laid up, and moored out of the said parish of *Madron*, yet he was, at such time, entitled to the tithes of fish caught by means thereof, as such boats and craft belonged to the parish, and from time to time set out from thence on their fishing voyages; and that the proprietors thereof, or the major part of them, were inhabitants of the said parish. The bill also charged, that *George Blewett* being the lessee of the tithes arising in the parish of *Saint Michael's Mount*, near to *Madron*, had claimed the tithe fish caught by the said boats, nets, craft, and seynes called *the Mount Content*, under a pretence that the said tithe was due and ought to be paid by ancient custom, in the parish where the said seyne was moored and laid up out of the fishing season; but the plaintiff charged the contrary, and said, that the defendants had endeavoured to defraud him of his tithe fish under various pretences. The bill therefore prayed, that the defendants might respectively account with him for the *single value* of all the tithes due from them or the persons they claimed under, and pay him all such money as should appear due to him for the same.

The defendants admitted, that the plaintiff was vicar of *Madron*, but denied the custom in the bill alledged; and insisted, that the custom was to pay the vicar tithes in kind of all sea fish that were taken by or belonged to any of the parishioners, or inhabitants of the parish, with any of their seynes, boats, nets, or other tackle, which from the end of the last preceding fishing season had been wintered, housed, moored, tied, or otherwise sheltered in the said parish, but that if such seynes, boats, nets, or other tackle for fishing, had been wintered, housed, moored, tied, or otherwise sheltered in any place or places out of the said parish, that then the vicar had no right to the tithes in kind of all or any part of the fish which should be therewith caught or taken in the next ensuing fishing season, but that such tithes were due and payable to the vicar or impropiator of the parish in which the said seynes, boats, or other tackle were wintered. The defendants further said, that the parish of *Madron* was adjoining to the sea shore of *Mount's Bay*; that there was a pilchard fishery adjoining to the said parish; that the custom of titthing fish therein, and other parishes adjoining to *Mount's Bay*, was to pay the vicar every tenth fish taken with any seynes, boats, nets, or other tackle for fishing belonging to, and which had



TORIA &  
against  
BATTEN.

had been wintered, housed, moored, tied, or otherwise sheltered in the parish, from the end of the last preceding year's fishing season, provided such fish were landed within the said parish; but that if the same were landed within any other parish, then the vicar of the parish in which such seynes, boats, nets, or other tackle had been wintered as aforesaid, was entitled to the tenth penny of the amount of such fish when the same were sold. They admitted, that they had from time to time landed fish in the parish of *Madron*, but insisted that the landing such fish within the said parish was no ways necessary to entitle the plaintiff to demand and receive the tithes thereof, because his right to such tithes arose according to the custom from the wintering of the seynes, boats, nets, and other tackle wherewith the said fish were caught in some place or places within the said parish, during the interval between the season which such fish were so caught and the end of the last preceding fishing season, and not otherwise. They further said, that they had from time to time duly paid the tithes of all the fish by them respectively taken to the plaintiff, or such other person or persons as were entitled thereto under the said custom. They further said, that the particular season for the taking fish usually began about *Midsummer* and continued with various and uncertain intervals till the beginning or middle of *March*; and that such continuance was generally divided into three seasons, called *the Summer Season*, *the Autumn Season*, and *the Winter Season*. They further said, that they had been inhabitants and parishioners of the parish of *Madron* for many years past; and set forth the different shares which they had in the said seynes, &c. as mentioned in their answer,

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel for all parties; and reading the several proofs taken in the cause;

THE COURT ordered a trial at law on the following issues:

FIRST, "Whether the plaintiff's predecessors, vicars of the parish of *Madron*, in the pleadings of this cause mentioned, have been from time out of mind, and whether the plaintiff as vicar thereof is well entitled to tithes in kind of all sorts of sea-fish taken or caught by and belonging to any of the parishioners or inhabitants of the said parish, or by or with any seynes, nets, or boats of or belonging to the said parish of *Madron*, or a satisfaction in money for the same, as the same should arise and become due." The jury, if they should find any other custom, to indorse the same on the *posse*.

SECONDLY, "Whether the vessel or seyne, in the pleadings of this cause mentioned, from the year 1753 to the year 1764, or for any part of that time, did belong to the parish of *Ma-*

BORLASE  
against  
BATTEN.

"*dron*." The jury, if they should find that the said vessel or *seyne* did belong to the parish of *Madron*, during any part of the said time, to indorse such time on the *possea*. The plaintiff in equity to be the plaintiff at law, and the action to be tried by a special jury.

The trial was accordingly had, and the jurors found, "That by custom, used and approved time out of mind, at and within the parish of *Madron*, the vicar of the said church and parish of *Madron* for the time being, had not been nor was well entitled to the tithes in kind of all sorts of sea-fish taken or caught by any of the parishioners or inhabitants of the said parish; but that the vicar for the time being, from time whereof the memory of man was not to the contrary, by custom, had been and then was entitled to tithes in kind of all sorts of sea-fish taken or caught by or with any *seynes*, nets, or boats of or belonging to the said parish of *Madron*, or a satisfaction in money for the same, as the same had and did arise and become due, as the said plaintiff had alledged." The jurors further found, "That the said vessel or *seyne* before mentioned from the said year 1753 to the year 1764, did belong to the said parish of *Madron*, as the plaintiff had alledged." And the judge indorsed upon the *possea*, that on the said trial it was proved and found by the jury, "That, by custom used and approved in the said parish time out of mind, such *seynes* and nets were of and belonging to the said parish, as had been housed and wintered in the interval between the last preceding fishing season, and the season where in such fish were caught and taken."

THE COURT, on the cause coming on for further directions, and on the *possea*, declared the plaintiff, as vicar of *Madron*, entitled by the custom to the tithes in kind of all sorts of sea fish, taken or caught by or with any *seynes*, nets, or boats that had been housed or wintered at or in the said parish, in the interval between the last preceding fishing season, and the season wherein such fish were caught and taken, and decreed the same accordingly; the deputy remembrancer to take the account, and to tax the plaintiff his costs, both at law and in equity to this time, allowance and deduction being made to the defendants of all such costs in equity, as were occasioned by the allegations in the bill respecting the tithe of fish caught by the parishioners merely.

SMYTHE, Chief Baron.

EXRE, Baron.

BURLAND, Baron.

HOTHAM, Baron.

SHEPHERD

## SHEPHERD against HARTAS,

Yorkshire, 12th July 1775.

TAIN TERM,  
15. GEO. 3.

THE bill stated, that *the Archbishop of York*, being seised in right of his fee to the tithes of corn, grain, hay, and all other great tithes, arising in the townships of *Spawnton* and *Appleton*, in the parish of *Lestingham*, in the county of *York*, by indenture of lease dated the twenty-ninth of *September 1764*, granted to the plaintiff *Shepherd* all the tithes of corn and hay of the said town of *Spawnton*, and all the tithes of corn, grain, and hay of *Appleton*, together with all and singular the commodities, rights, and appurtenances whatsoever to the same premises belonging, and then in the occupation of him the plaintiff *Shepherd*, to hold and enjoy the same to him, his executors, &c. for twenty-one years; that by virtue of the said lease, the plaintiff *Shepherd* became entitled to all the tithes aforesaid in kind; that the said *Shepherd* had let all the great tithes of *Appleton* to the plaintiff *Grundell*, and those of *Spawnton* to the plaintiff *Blakesock*, who severally became entitled to demand and receive such tithes; that all the defendants had been, and then were, tenants in possession of divers arable and meadow lands in the said townships, and had rendered their tithes in kind to the plaintiffs, as lessees and farmers, from the making of the said lease to the year 1769 and 1770, and ought from thence to have rendered their tithes to them, or to have made them a satisfaction for the same; but that they had refused so to do, and had taken away their crops of grass, clover, rye, wheat, oats, pease, and barley, and converted the tithes thereof to their own use. The bill also charged, that the several lands in the possession of the defendants were not discharged from the payment of great tithes, but that the same had, time out of mind, been paid to *the Archbishop*, his lessee or undertenant, in kind, by all the owners and proprietors of lands within the said townships, notwithstanding the same were in their own hands down to the said years 1769 and 1770. The bill therefore prayed an account and payment.

The rector of *Lestingham*, in *Yorkshire*, is entitled to the great tithes of the townships of *Spawnton* and *Appleton*, and particularly to the great tithes of *the Demesne Lands* of the manor of *Spawnton*, although the same were formerly parcel of the monastery of *Saint Mary*, near the walls of *York*, and were held, in unity of possession, by the prior of the said monastery with the rectory *Lestingham*.

The defendant *Shepherd* and others said, that they had no knowledge of the lease stated in the bill, and left the plaintiff to the proof thereof; but that they believed, that the archbishop was, on the twenty-ninth of *September 1764*, seised and well entitled to all the tithes of corn, grain, and hay, arising within the said townships, so far as any such tithes were payable; and that the plaintiffs were, if such lease existed, entitled to the same under it. They admitted, that the defendants *William Hartas*, *John Hartas*, and *John Maw*, in 1769 and 1770, occupied some lands in the said townships, and had reaped and taken away several quantities of corn, grain, and hay; but they insisted,



SHEPHERD  
against  
HARTAS.

that no tithes whatever, or any satisfaction, was payable for the same; for that up to, and at the time of the dissolution of the monastery of *Saint Mary*, near the walls of *York*, the prior thereof for the time being had been immemorially seised, in his *demesne as of fee* in right of the said monastery, of all the lands that were in their occupation in the years 1769 and 1770; that the said prior had been, during all the said time, rector of the rectory within which the said several lands lay; that the tithes of corn, grain, hay, and all other great tithes of the said lands, were during all the said time payable to the rector; that the said prior had, during the said time, held the said rectory, and also the lands in the occupation of the defendants, in his proper hands, in right of the said monastery; that the said prior, by reason thereof, for all the time aforesaid, and up to and at the time of the dissolution of the said monastery, had and held all the said lands exonerated and discharged from the payment of all tithes of corn, grain, hay, and all other great and predial tithes whatsoever; that the said monastery was one of the greater monasteries; that it was dissolved by and vested in *Henry the Eighth*, with all the lands and possessions thereof, by virtue of the act of parliament on that account made; that by virtue of a surrender of the said monastery by the prior and convent, and of the said statute and the unity of possession in the said prior, all such lands became discharged and exempted from the payment of tithes of corn, grain, hay, and other great tithes whatever, whilst in the hands of the respective owners; that all the said lands, and all or most of the other lands in the said townships respectively were under the same predicament, and had, ever since the dissolution of the said monastery, been reputed to be exempted and discharged from the payment of all such tithes whilst in the hands of the proper owners thereof; that they, the defendants, were, during the years 1769 and 1770, actual owners, and seised in fee simple or for some other estate of inheritance, of the several lands in the said townships; and that by the statute 31. *Hen. 8.* and the said unity of possession, all the said lands were in the said years exempted from the payment of all tithes of corn, grain, and hay, and other predial tithes, and still were, and would continue so as long as they should remain in the hands of the respective owners; that the plaintiffs, as lessees and farmers, could not therefore be entitled to any satisfaction for the said tithes; and that whatever payments had been made for such tithes had been made by the parties in their own wrong; but that they believed, that no tithes in kind had ever been, or if so not constantly paid for the said lands, when in the hands of the owners thereof. They further said, that in *Hilary Term*, in the sixth year of *Queen Anne*, *Richard Shepherd*, the father of the plaintiff *Richard Shepherd*, exhibited his

his bill in this court, as lessee under the then *Archbishop of York*, for the tithes of corn, grain, and hay, in the said townships of *Spawnton* and *Appleton*, against *James Grindon* and others, the owners and occupiers of the lands therein, for payment of their tithes; that the said *James Grindon*, as owner and occupier of land in *Spawnton*, called the *Rigg Hagg Lands*, and which were part of the defendant's lands, by his answer insisted on an exemption from payment of the tithes thereof, as being owner and occupier of the same, and that they were, at the dissolution of the said monastery, part of the possession thereof; that the said cause being at issue, divers witnesses were examined; that one of the witnesses gave evidence of a suit being instituted by a former *Archbishop of York* against *John Carrington*, owner of the said *Rigg Hagg Lands*, for payment of tithes; and that such suit was determined in favour of *Carrington*; and that the said *Richard Shepherd* did not proceed to an hearing.

SHEPHERD  
against  
HARTAS,

The plaintiffs filed a *supplemental bill*, stating the surrender of the former lease and its renewal, and insisting that they were entitled to the relief prayed by their *original bill*.

The defendants, in answer to the supplemental bill, said, that they believed that on the twenty-ninth of *September 1771*, the plaintiff *Richard Shepherd* had surrendered up the lease set forth in the *original bill*; and that in consideration thereof, the *Archbishop of York* made such lease as was stated in the *supplemental bill*; but they submitted to the Court, whether the plaintiff had not relinquished his right to such titheable matters as became due by such former lease; and insisted, that he was not entitled to any relief. They further said, that although they had admitted that the defendants *William Hartas* and *John Hartas* and *John Maw* had, in the year 1769, occupied lands in *Spawnton* and *Appleton*, and had taken therefrom corn, grain, and hay; and that in the year 1770 all the defendants had occupied lands in both the said townships, and taken from thence several quantities of corn, grain, and hay; yet that the lands in the township of *Spawnton* consisted of two kinds, viz. *Demesne Lands* belonging to the manor of *Spawnton*, which were discharged of the payment of tithes while in the hands of the owners, and of other lands which were of common right liable to the payment of tithes, and were not discharged of the payment thereof by the means in which the *Demesne Lands* were discharged; that all the lands which the defendants *William Hartas* and *John Hartas* and *John Maw* held in the year 1769, and all the defendants in the year 1770, in the said parish of *Leftringham* or *Lassringham*, within which parish the said townships of *Spawnton* and *Appleton* lie, and to the rector or vicar of which parish all tithes within the said townships were and are payable, so far as any such were or are payable, had been,  
from

SHEPHERD  
against  
HARTAL.

from time whereof the memory of man was not to the contrary, before, and down to, and at the time of the dissolution of the monastery of *Saint Mary*, near the walls of *York*, parcel of the *Demefne Lands* of the manor of *Spawnton*, in the said parish of *Lestringham*, and parcel of the possessions of the said dissolved monastery; that the prior of the said monastery for the time being had been, and was seised in his demefne as of fee, in right of the said monastery, of the *Demefne Lands* of the said manor of *Spawnton* (whereof the said lands in their respective occupations were parcel); and that during all the said time the said prior for the time being was rector, and seised of the rectory of *Lestringham* in fee; that the said prior in right of the said monastery, or his lessee or farmer, had and held all the *Demefne Lands* in his or their proper hands; and that by reason thereof, and of the said unity of possession of the said rectory and the *Demefne Lands*, the prior, during all the time aforesaid down to the dissolution of the monastery, held all the *Demefne Lands* exonerated and discharged of and from the payment of all tithes of corn, grain, hay, and all other great or predial tithes whatsoever; that the said monastery being one of the greater monasteries, and being dissolved and duly surrendered by virtue of the said act and of the said unity of possession, all the *Demefne Lands* became, and had ever since been, and now were exempted and discharged from payment of all tithes as aforesaid; that from the time of the said surrender to the time of the demise of *Henry the Eighth*, his said majesty had been, and continued to be seised to him and his successors, in right of his crown, of the *Demefne Lands* of the manor of *Spawnton*; that his said majesty, by virtue of the said act and surrender and unity of possession, had held and enjoyed the *Demefne Lands* discharged from the payment of all great tithes; that on the demise of his said majesty, the *Demefne Lands* had descended on *Edward the Sixth*, who, in the third year of his reign, duly granted and conveyed the same to *Sir William Gray, Knight*, and *J. Bannister*, to hold to them and their heirs in as ample a manner as the said late king had held the same; and that all the said lands and grounds had, by divers mesne conveyances and descents, come to the defendants respectively. They further said, that during their respective occupations of the said lands, they were the proper owners, and seised thereof in fee simple, or for some other estate of inheritance. They further said, that all the lands which they occupied, as all other the *Demefne Lands* of the said manor of *Spawnton*, had always been reputed to be abbey lands, and discharged of the payment of tithes whilst in the hands of the respective owners thereof; and that all the said lands had always been reputed to be of the same tenure and nature as *Rigg Hagg Lands* aforesaid, and for payment of the great tithes of which a suit had been instituted as aforesaid. They further said, that about *Easter*, in the thirty-fourth



fourth year of *Charles the Second*, one *Richard Shepherd*, as lessee under the then *Archbishop of York* of two third parts of the tithes of corn, grain, and hay, arising in the said towns of *Spawnton* and *Appleton*, and elsewhere in the said parish of *Lestringham*, and *T. Flatbers*, clerk, as vicar there, and as claiming therefore to be entitled to the other third part of the said tithes, exhibited their bill in this court against *William Otterburne* and others to compel payment of tithes of corn, grain, and hay, of lands occupied by them in the said parish; that the defendants put in their answers thereto; and insisted on such exemption from the payment of tithes in respect of their lands, some of which were the same lands which the present defendants now occupy, and the plaintiffs did not proceed further in the suit.

SHEPHERD  
against  
HARTAS.

The defendant *John Hartas* said, that about the year 1773 he became a bankrupt; that a bargain and sale of all his estate had been duly executed and enrolled.

The plaintiffs replied (except to the answer of the defendant *John Hartas*, who had become a bankrupt); the defendants rejoined; but before any witnesses were examined, the plaintiff *Blakelock* died; and the said suit being properly revived, witnesses were examined on both sides; and on the hearing of the cause, and counsel for all parties; and reading the depositions of several witnesses; an indenture dated the first of *October*, in the twenty-ninth year of *Henry the Eighth*; a deed of requisition of *William Lord Gray* and *John Bannister*; and on full debate of the matter;

THE COURT ordered the deputy remembrancer to take an account of what was due to the respective plaintiffs from the respective defendants (except *John Hartas*, who had become a bankrupt, and *Robert Mintoft*, who died before the commission was executed), during the time demanded by the bills, for all and singular the several titheable matters and things which they respectively had upon the farms and lands within the townships of *Spawnton* and *Appleton*, occupied by the defendants within the said parish of *Lestringham* or *Loftringham* in the pleadings mentioned; and that the defendants do pay to the plaintiffs their costs of this suit to be taxed; further directions to be reserved until after the report.

SMYTHE, Chief Baron.

EYRE, Baron.

BURLAND, Baron.

WALTER

TRIN. TERM,  
15. GEO. 3.

WALTER *against* FLINT.

Kent, 19th July 1775.

The manner in which the rector of *Crayford*, in *Kent*, is entitled to the great and small tithes of the parish.

See ante, 293.

THE rector of *Crayford*, in the county of *Kent*, claimed, from the year 1770, all the tithes of wheat, barley, oats, rye, beans, pease, tares, turnips, milch cows, sheep, hogs, calves, lambs, pigs, wool, dry and unprofitable cattle, poultry, eggs, honey, fruits, herbs, plants, roots, underwood, reeds, colts, and divers other small tithes, together with *Easter* offerings at twopence a-head for all persons above fourteen years of age.

The defendant admitted the plaintiff's title to the tithes demanded by the bill; and said, he had set out all the tithes of his wheat, barley, pease, and beans, and other grains, which became payable to the plaintiff for that year; and that he was not indebted to him in any thing on account of the said tithes; that the plaintiff had never applied to him for an account of his privy tithes; that he had tendered him nine pounds, thirteen shillings, and tenpence for them, which he had refused to accept; that he had frequently offered to render to the plaintiff the tithe of his calves, lambs, and pigs in kind; that he had given him notice to take such tithes at the proper times, and particularly the lambs when they were in general seven weeks or two months old, and able to live without the dams; but he had refused to come, insisting, that he was entitled to the tithes of calves, lambs, and pigs, when fit for the butcher.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel for the said parties; and reading several proofs taken in the cause on behalf of each; a letter without a date, from the defendant to the plaintiff, requiring him to take away the tithe of wheat set out by him; an account of the defendant's privy tithes for one year, amounting to nine pounds, thirteen shillings, and tenpence; and at the foot thereof, a tender of payment of the said sum to the plaintiff, signed by the defendant; and the plaintiff's counsel admitting such tender to have been made for the value of the said small tithes; and also reading a note signed by the defendant, directed to the plaintiff, dated the eleventh of February 1771, desiring him to come or send somebody to see the defendant's lambs properly tithed; and on full debate of the matter;

THE COURT ordered, by consent of both parties, that the bill be retained till *Michaelmas Term* 1776, the plaintiff in the mean time to be at liberty to proceed to a trial at law in an action to be by him brought against the defendant on the statute for not setting out his tithe of wheat, oats, and beans.

THE

THE COURT further ordered the deputy remembrancer to take an account of the value of the small tithes due from the defendant to the plaintiff during the time demanded by the bill: the consideration of costs and further directions to be reserved, &c.

WALTER  
against  
FLINT.

On the tenth of *December* 1776, the bill was ordered to be retained till *Easter Term*, and the plaintiff to proceed to trial at the next assizes for the county of *Kent*; but on the thirtieth of *May* 1777, the plaintiff not having proceeded to a trial, THE COURT ordered the bill to be dismissed, so far as the same related to the demand of tithes of wheat, oats, and beans, with costs.

On the fourteenth of *May* 1779, upon opening the decree and report, no exceptions having been taken to the same, THE COURT ordered the report to be confirmed, and the defendant to pay fifty-three pounds, six shillings, and twopence for his small tithes from *Michaelmas* 1770 to *Michaelmas* 1775; and that the bill be dismissed with costs for the defendant, the plaintiff not having proved more due to him for the said tithes than the sum of nine pounds, thirteen shillings, and tenpence tendered, being the value of the tithes demanded by the bill; the defendant to be at liberty to retain in his hands the said sum of fifty-three pounds, six shillings, and twopence, as for and in part of the said defendant's costs so to be taxed as afore said.

#### LANDER against SPENCER.

*Staffordshire, 20th July 1775.*

TRIN. TERM,  
15. GEO. 3.

THE rector of *Colton*, in the county of *Stafford*, claimed all tithes in kind, as well great as small, which had yearly arisen on that part of *Boughby's Farm* which lay in the said parish, and particularly the tithes of milk, wool, lambs, and the agistment of barren and unprofitable cattle.

The rector of *Colton*, in *Staffordshire*, is not entitled to the small tithes of that part of *Boughby's Farm* which lies in the said parish; but the same belongs, either in kind or by *modus*, to the vicar of the adjoining parish of *Colwich*.

The defendant admitted, that the plaintiff was rector, and that he occupied *Boughby's Farm*; and said, the messuage, out-buildings, garden, and orchard of the said farm were situated in the parish of *Colwich*; that the parish of *Colwich* was a vicarage endowed; that the otherlands, consisting of one hundred and thirty acres belonging to the said farm lay in the parish of *Colton*; that the farm had immemorially consisted of the same lands; that no small tithes had ever, in the memory of man, been paid or payable to the rector of *Colton* for the said farm, but that a certain *modus* of six shillings and eightpence had been paid at *Michaelmas* yearly to the vicar of *Colwich*, as a *modus* in lieu of the tithes claimed by the bill, and all other small tithes arising from *Boughby's Farm*; that the vicarage of *Colwich* had



LANDER  
against  
SPENCER.

had been immemorially endowed with, or was entitled to the small tithes of divers other farms or tenements in the parish of *Colton*, or to prescriptive payments in lieu thereof, as appeared by one or more ancient terrier or terriers in the archives of the parish of *Colton*.

The plaintiff replied; the defendant rejoined; and witnesses were examined on each side; and upon hearing counsel; and reading the proofs in the cause;

THE COURT ordered a trial at law on the following issue, "Whether the vicar of *Colwich* is entitled to all small tithes, or some *modus* in lieu thereof, throughout *Boughey's Farm*, in the pleadings of this cause mentioned:" to be tried by a special jury, with liberty to the judge to indorse any special matter on the *posse*; and further directions to be reserved until after the trial.

The issue was accordingly tried by a special jury; and the jurors found, that the vicar of *Colwich* is entitled to all the small tithes yearly arising throughout *Boughey's Farm*, or to a *modus* in lieu thereof.

The cause came on, on the thirteenth of *May* 1776, to be further heard on the *posse*; and upon hearing counsel; and reading the decretal order and *posse*;

THE COURT ordered the bill to be dismissed, with costs both at law and in equity.

TRIN. TERM,  
15. GEO. 3.

WILLIAMS against JAMES.

*Cornwall*, 20th July 1775.

The vicar of  
*Saint Keverne*,  
in *Cornwall*, is  
entitled to the  
small tithes of  
the farms called  
*Great Tremen-  
beere*, *Little  
Tremenbeere* and  
*Goosbeck Farm*,  
in kind.

See another  
cause, Hilary  
Term, 19. Geo. 3.

THE vicar of *Saint Keverne*, in the county of *Cornwall*, claimed all manner of small tithes in kind, and *Easter* offerings arising in the parish.

The defendant *Thomas James* admitted, that the plaintiff was vicar of the parish, and entitled to all vicarial tithes and *Easter* offerings, or to some *modus* in lieu thereof; and stated, that he was the occupier of several ancient tenements in the said parish, called *Great Tremenbeere* and *Little Tremenbeere*; and that there had been a *modus* immemorially paid to the vicar for the time being, by the occupier of *Great Tremenbeere*, of eight shillings, in lieu of all small tithes yearly arising on the said tenement at *Michaelmas*, or quarterly if demanded, at the election of the vicar; another *modus* of four shillings yearly, in lieu of small tithes for *Little Tremenbeere*, payable as aforesaid; that the vicars sometimes collected the said several sums yearly, and sometimes half-yearly; that a *Mr. Evans*, as vicar, commenced a suit in this court against several of the parishioners to overturn several *moduses*

*modus* set up by them; but that he dropped the same, and submitted to the payment of costs, and accepted of the several sums insisted on as *modus* payable by the said parish; that he had only two receipts from *Evans* in 1750 and 1753, which receipts were expressed to be in lieu of small tithes; that he had two, dated in 1765 and 1766, which were expressed to be compositions for small tithes; but that he was imposed upon in taking such receipts, as the sums mentioned therein were paid as *modus*, and not as compositions: and he set forth his titheable matters and things, but not the quantities and values of the tithes of the same; and said, that he had kept no account, apprehending that the said *modus* were payable in lieu of tithes in kind arising on the said premises. He further said, that he had been occupier of *Cornissock Tenement*, and had paid the plaintiff, up to the year 1770, the sum of thirteen shillings and sixpence a-year, as a composition in lieu of tithes in kind. He further said, that the vicars of the said parish were not entitled to the tithes of hay, the same being considered as a great tithe. He also said, he had paid his *Easter offerings* to 1770, and that he was ready and willing to pay the said several *modus*, and always had been, in case the plaintiff had thought fit to receive the same. He said, that the plaintiff had demanded ninepence in the pound according to the rack value of the said tenements, but had not demanded tithes in kind of the same. He admitted, that he had from time to time sold or converted to his own use all such titheable matters and things, the tithes whereof were accounted small tithes, as he had from time to time had on the lands occupied by him in the said parish since the plaintiff became vicar.

WILLIAMS  
against  
JAMES.

The plaintiff replied; the defendant rejoined; and witnesses were examined on each side; and upon hearing counsel; and reading an entry in the book of rates of the parish of *Saint Keverne*, of the twenty-fourth of April 1683, being an account then taken of the tithes to be paid to the vicar in kind, signed *John Sweet*, vicar, and twelve parishioners, and among others *J. Bamfield* and *W. Sandys*; another entry in the said book in 1682, being a rate on *Thomas Bamfield* and *William Sandys*; another entry in the same book in 1683, *Tremenheere*, on *Thomas Bamfield* and *William Sandys*; an entry in a book entitled, "Compositions due from *Saint Keverne* from Lady Day 1718 to "Michaelmas," "*Tremenheere*, *Lawrence James*, four shillings, "*John James*, two shillings;" and a receipt on the last page but one, signed *J. Jago*; also reading another exhibit, being a composition due from *Saint Keverne* 1719; an entry from the said book, "*Tremenheere*, *John James*, four shillings, *Idem*, two shillings;" also another exhibit, being a book entitled, "*Saint Keverne's* compositions for half-a-year's small tithes due to the vicar at Lady Day 1737;" an entry in the said book,

"*Tremenheere*,

WILLIAMS  
against  
JAMES.

"*Tremenbeere, Widow James*, four shillings, *Eadem*, two shillings;" and reading several depositions of witnesses taken in the cause; and on full debate of the matter;

THE COURT ordered the deputy remembrancer to take an account of the tithes in kind demanded by the bill; and the defendant to pay to the plaintiff his costs of this suit.

THE COURT FULL.

TRIN. TERM,  
15. GEO. 3.

WALBANK against HAYWARD.

*Gloucestershire*, 21st July 1775.

The rector of, *Cranham*, in *Gloucestershire*, claims the tithes of reeds or germins annually cut from the stumps of trees, mostly beech, and sold for firewood, making of charcoal, and other purposes.

THE rector of *Cranham*, in the county of *Gloucester*, claimed the tithes of the parish in kind, and particularly the tithes of wood; and stated, that the parish of *Cranham* contained several hundred acres of woods, consisting mostly of beech wood, which were reeds or germins, proceeding from or growing upon the stools of trees that had been entirely cut down; that the said woods were annually cut, and the wood felled drawn by the owners thereof, and corded and sold, or otherwise disposed of for firing, charcoal, or other purposes. The bill then stated, that the defendants were proprietors of several hundred acres of wood, which they had respectively, for many years, cut down, sold, and disposed of, for the purposes aforesaid for their own benefit, but the tithes of which they had refused to pay.

The defendants say, that the annual cuttings were only from such parts of the woods where the reeds or germins grew too close to each other;

that the trees were above twenty years old;

that the woods so drawn were used as timber;

The defendant *Sandys* said, that he had been, for twelve years past, proprietor of several woods in the parish; that he could not set forth a particular account thereof, as he did not reside in the county; but that he believed, that they produced what might be termed an annual cutting or drawing thereof, which was by cutting down in one year such parcels of the said woods as grew too thick or near together, of such size and in such places as by the woodward was thought fit; and the like in another year, and so on yearly; but that by such cuttings the parts or places cut in one year were not cut in the same parts or places for a great number of years after; that he believed his woods annually cut or drawn as aforesaid were trees of above twenty years growth, and some of them of sixty years growth or upwards, and of a considerable size or girth, and much above that of coppice or underwoods; that part of the said woods so cut or drawn as aforesaid was made use of as timber, or for timber-like uses; and that such woods might be rated in the parish book of *Cranham*, and paid taxes annually to church and poor of the said parish: and he insisted, that the said woods ought to be deemed as timber or timber trees, and privileged and exempted from paying tithes.

The other defendants said, that they were owners of several acres of wood within the said parish.

At



All the defendants said, that by the custom of the country and of the parish of *Cranham*, beech wood was considered as timber, and made use of for the same purposes as oak, ash, and other timber trees; that the several woods belonging to the defendants consisted mostly of beech trees; that some few oaks, ashes, and other trees, were interspersed amongst them; that the rectors of the said parish had never received tithes in kind of the said wood, or any satisfaction for the same; and that they were not liable to the payment of tithes in kind of the said wood, or any satisfaction in lieu thereof. They further said, that coppice or underwood was always cut by *the lug*, and laid in drifts; but that no part of the woods in the said parish belonging to the defendant had been cut as coppice or underwood, but as timber.

WALBANK  
against  
HAYWARD.

that beech wood was, by the custom of the country, accounted timber;

that the coppice or underwood was always cut by *the lug*, and laid in drifts;

The defendant *Sandys* said, that his woods were for the most part above twenty years, and some above sixty years growth, more or less, before the same were cut down.

that some of the wood was sixty years old;

The other defendants likewise said, that they believed that their woods were above sixty years growth before they were cut down.

All the defendants said, that they believed that almost the whole of their said woods did grow up from the mast or seed, and not from old stools, the said old stools generally dying, being stifled by the branches of tall trees surrounding them; but that if any germins or underwood were produced from old stools which did not die, the produce of such old stools were not liable to be tithed, inasmuch as the trees cut down were, as they believed, above twenty years growth, and timber trees according to the custom of the said country, and therefore privileged from payment of tithes; that their said woods did not, in general, consist of reeds or germins proceeding from old stools of any sort, otherwise than as before mentioned; but that, on the contrary, five hundred trees grew from mast for one that grew from the stool; nor had they been usually drawn or cut annually, but, on the contrary, had gone for twenty years without having a single tree cut down as they believed.

that the wood grew up from the mast, and not from old stumps;

that if it were germins from old stumps, it was not titheable, the stumps being the remains of timber trees above twenty years old.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel, and reading the several proofs taken in the cause;

The cause heard.

THE COURT ordered the deputy remembrancer to enquire and state to the Court what parts and quantities of the wood in the pleadings mentioned, which had been cut down by the defendants respectively during the time the plaintiff had been rector of the parish, grew from the mast or seed, and were under

An account ordered of the wood which had grown from mast and been cut under twenty years growth; of that

which had grown from old stumps and cut at any age; and the underwood,

WALBANK  
against  
HAYWARD.

twenty years growth; and what parts and quantities thereof grew from stools or roots of trees heretofore fallen or cut down by them respectively during the time aforesaid, of any age, size, or growth whatsoever. The Court also ordered the deputy remembrancer to enquire and state what underwood had been taken or felled from the woods of the defendant *Sandy* in the parish of *Crankam* for the time aforesaid: costs and further directions to be reserved till after the report.

MICH. TERM,  
16. GEO. 3.

BEDFORD against SAMBELL.

Cornwall, 7th December 1775.

The manner in which the rector of *Landulph*, in *Cornwall*, is entitled to receive the tithes and *Easter* offerings according to the custom of the parish.

THE rector of *Landulph*, otherwise *Landilph*, in the county of *Cornwall*, claimed all manner of tithes, and all *Easter* and other offerings, oblations, obventions, duties, and profits whatsoever belonging to the said rectory.

The defendants admitted, that the plaintiff was rector of the parish, and entitled to the tithes of all titheable matters, according to the customary manner of answering such tithes; and said, that by the immemorial custom of the parish the tithes arising therein had been answered in the following manner: that of CORN and GRAIN, the parson was to have the tenth sheaf; of PEASE, the tenth sheaf when cut or bound in sheaves; of GRASS, the tenth, when made into first grass cocks; of wood, the tenth faggot of all coppice wood; and for all hedge wood, toppings, and loppings, furze, fire wood, and fuel, one penny, at *Easter*; with respect to SURPLICE FEES, offerings, and oblations, that every housekeeper, if unmarried, was to pay to the parson twopence; if married, fourpence; and every other person being a communicant, twopence; that for a GARDEN or gardens there was to be paid to the parson yearly, one penny, and no more, by the name of the *garden penny*, payable at *Easter*; with respect to LAMBS, that the parson was to have the tenth lamb that should fall in the parish, to be tithed by the parson and parishioner on *Saint Mark's Day*, in manner following; that the parishioner or owner should take two, then the parson one, then the parishioner or owner seven, to make up the number ten; that then the parishioner should take two again, as he did at first, and proceed in the like manner throughout the whole; and that if there remained any odd number, the parishioner or owner should pay threepence for every such lamb immediately, or at *Michaelmas*, the usual time; that wool was to be tithed at *shearing time* in the same manner as lambs; and that if there were any odd fleeces remaining, the parishioner was to pay twopence for each immediately, or at *Michaelmas*, the usual time of accounting; with respect to cows, for every milch cow there was to be paid to the parson one penny; for every

every calf fatted or killed, one penny; and for every calf reared, one halfpenny at *Michaelmas*; for every COLT, fourpence at *Michaelmas*; for every EWE that should be milked, one farthing, and no more, at *Michaelmas*; with respect to PIGS, the parson was to have the tenth pig at three weeks old, and the remaining odd number, if any, to be computed the next litter of pigs; as to GESE, the tenth gosling at *Midsummer*, and the odd number, if any, to be computed the next year; that for all APPLES grown within the parish, and made into cyder, there was due and payable to the parson for every hoghead of cyder so made, twopence, payable at *Michaelmas*; and the like for PEARS made into perry; as to MONEY, the parson was to have the tenth at the time of burning the bees; as to HOPS, the tenth pound when gathered and dried. The defendants then further stated, that during the said time they had occupied several farms and lands in the parish: and they set forth the names of their lands; the yearly values thereof; a full account of their titheable matters, and of the tithes due for the same, save only of corn, hay, wool, lambs, pigs, geese, and honey, the lawful tithes thereof having, during the time aforesaid, been duly paid; and they said, that the said customary payments for the several titheable matters mentioned in the answer had been tendered to the plaintiff; and that they had resided in the parish all the said time, and had tendered annually at *Easter* fourpence as an offering, according to the customs before-mentioned.

BEDFORD  
against  
SAMBELL.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel; and reading several depositions; a letter from *Canon Snow* to the plaintiff; an exhibit, beginning with the words "*Llandilp Composition*;" and several other exhibits, marked number one, two, and three;

THE COURT ordered a trial at law on four of the *moduses*.

FIRST, "Whether the parson is to have the tenth lamb that shall be fallen within the parish, to be tithed by the parson and parishioner on *Saint Mark's Day*, in manner following, the parishioner or owner taking two, then the parson taking one, then the parishioner or owner seven, to make up the number ten; then the parishioner to take two again as he did at first, and proceed in the like manner throughout the whole; and if there remain any odd number, the parishioner or owner to pay threepence for every such lamb immediately, or at *Michaelmas* the usual time."

SECONDLY, "Whether wool is to be tithed at shearing time in the same manner as lambs; and if there be any odd fleeces remaining, the parishioner is to pay twopence for each immediately, or at *Michaelmas*, the usual time of accounting."

L 1 2

THIRDLY,



BERFORD  
against  
SAMBELL.

THIRDLY, "Whether, for every milch cow, there is to be paid to the parson one penny."

FOURTHLY, "Whether, for all apples made into cyder, there is due and payable to the parson for every hogsheaf of cyder so made, twopence at *Michaelmas*?" to be tried by a special jury, and the judge to indorse, &c.

The said issues were accordingly tried by a special jury, who found the same payable accordingly, in lieu of the tithes of lambs, wool, milk, and cyder; but on the nineteenth day of June 1776, a new trial was granted, on payment of the costs, to try the two *modus*es with respect to lambs and wool; and the defendants thereupon submitted to abandon the proof of the said two *modus*es respecting the manner of tithing lambs and wool, and declined proceeding to a new trial.

THE COURT, on the eleventh of November 1776, on reading the decree, *postea*, and order, and hearing counsel on both sides, ordered the deputy remembrancer to take an account of what was due for the tithes of milk and cyder, according to the *modus*es found by the verdict; the plaintiff to pay the defendants their costs of the said trial, but not of this suit; the remembrancer to take an account (without costs to this time) of what was due for *Easter* offerings and the tithes of agistment of lambs and wool demanded by the bill; and the bill, as to all other matters, to be dismissed without costs.

THE COURT FULL.

MICH. TERM,  
16. GEO. 3.

LLOYD against MORTIMER.

Derbyshire, 11th December 1775.

The vicar of  
*Stopenhill*, in  
*Derbyshire*, is en-  
titled to the  
small tithes of  
the village of  
*Cauldwell*, in  
kind.

S. C. 7 Bro.  
P. C. 493.

THE bill stated, that the plaintiff had, for several years past, been vicar of *Stopenhill*, in the county of *Derby*, and was, as such, entitled, by endowment or prescription, to all tithes of hay, grafs, clover cut for hay, and all small tithes arising therein, and particularly in the village of *Cauldwell*, parcel of the said parish; that the defendants had, for several years past, occupied divers farms, lands, and tenements in the said village; that they had cut hay and hay-grafs therefrom; that they had also fed and depastured cows, which had yielded milk and calves, and divers barren and unprofitable cattle thereon; that they had also on the said lands sheep, which had yielded lambs and wool; that they had also pigs, geese, poultry, colts, hemp, flax, honey, wax, and other titheable matters, the tithes of which they had refused to pay, insisting, that there was an ancient *modus* of six pounds a-year in lieu of tithe hay and all small tithes arising within the village of *Cauldwell* aforesaid; but the plaintiff charged, that the said sum had been received as a *composition* only, and that he had, in *November* last, given notice to the defendants,

that

that he would no longer accept the same as a *composition*, but would take his said tithes in kind. The bill therefore prayed, that the defendants might account for and pay their said tithes.

LLOYD  
against  
MORTIMER,

The defendants admitted, that the plaintiff was vicar of the parish, and entitled, by endowment, prescription, or otherwise, to several kinds of small tithes therein, or to some *modus* or composition in lieu thereof, but not, as they believed, to the tithes of hay, grass, clover, or any kind of small tithes, in the village of *Cauldwell*; for that there had been immemorially paid by the inhabitants, proprietors, and occupiers of lands and tenements within the said village, to the plaintiff and his predecessors vicars of *Stapenhill*, the sum of six pounds, on the feast-day of *Saint John the Baptist* annually, as a *modus* in lieu of all tithes, rights, compositions, obventions, and emoluments whatsoever, due or payable to the vicar of the said parish from the said inhabitants, proprietors, and occupiers of lands and tenements within the said village of *Cauldwell*, in respect of such lands and tenements, and every of them. They further said, that the said village was a distinct chapelry; that there had been, time immemorial, a church or chapel therein peculiarly appropriated to the use of the inhabitants thereof; that divine service was, and always had been at stated times, performed therein by the vicars of *Stapenhill*; that the inhabitants of *Cauldwell* had immemorially chosen their own constable and church or chapel warden, and had maintained their own poor; that they had kept the chapel in repair, except the chancel; that the chancel was repaired by the defendant *Mortimer*, by rates or assessments on the inhabitants of *Cauldwell* only, exclusively and independently of the rest of the parish of *Stapenhill*, there being separate rates or assessments for the rest of the said parish. They further said, that the said sum of six pounds so paid to the vicar of *Stapenhill* had, as they believed, been immemorially raised by the inhabitants and occupiers of lands and tenements in *Cauldwell* according to a pound rate levied and assessed in the said chapelry by a levy called *the parson's levy*, in proportion to the rents and values within the said village; and that the said sum had been constantly paid in one sum to the said vicar by the church or chapel warden of *Cauldwell*. They further said, that in the reign of *Charles the Second*, some disputes had arisen between *J. Lucas*, the then vicar of the parish, and *S. Saunders*, the ancestor of the defendant *Mortimer*, and other inhabitants of *Cauldwell*, concerning the divine service necessary to be performed within the said church or chapel of *Cauldwell*; that the said *Lucas* thereupon set up a claim to some tithes, or a composition in lieu thereof; that to prevent disputes in the chapelry for the time to come, and to perpetuate the memory as well of the divine service usually performed, and of right to be performed,

LLOYD  
against  
MORTIMER.

by the vicar, in the church or chapel of *Cauldwell* as of the *modus* or stipend usually and of right to be paid by the inhabitants, proprietors, and occupiers of lands and tenements in *Cauldwell*, the said *J. Lucas* and the said inhabitants, under the sanction and with the approbation of *William, Lord Paget*, then patron of the said vicarage, and of *the Bishop of Litchfield and Coventry*, the ordinary, an indenture was made and duly executed in the year 1676, as set forth *verbatim* in the answer; and that the same was in custody of the defendant *Mortimer*. The defendant therefore insisted, that the said *modus* or ancient payment of six pounds having been confirmed by immemorial custom, by the consent of the parties, and by the said ancient indenture, could not now be set aside. They further said, that the village of *Cauldwell* contained about eight hundred acres; and they set forth the quantities of lands occupied by them therein; and insisted, that as no tithes in kind of the said lands had, within the memory of man, been taken by the vicars of *Stapenhill*, nor any payment or composition for the same, except as aforesaid, they ought not to be compelled to give any account of the produce of the said lands; but they submitted to be examined upon interrogatories; and, if the plaintiff should obtain a decree against them, to account for the value of the tithes of the said lands during the time aforesaid:

The plaintiff replied; the defendants rejoined; and several witnesses were examined on both sides; and upon hearing counsel for all parties; and reading the following proofs on behalf of the plaintiff; an indenture dated the twenty-second of *September* 1676, in the defendant's answer mentioned; a terrier dated in 1665, signed *John Lucas* and others; the four following terriers, dated respectively the twenty-ninth of *September* 1719, and the thirteenth of *July* 1726, and the twenty-third of *October* 1701, and the second of *February* 1705; and the defendant's answer; and reading, for the defendants, a terrier dated the twenty-third of *June* 1668; and several depositions;

THE COURT ordered the deputy remembrancer to take an account of what was due for the tithes demanded by the bill; and the defendants to pay the amount thereof respectively, but without costs.

The defendants *H. W. Mortimer* and *Richard Kirkman* appealed to the House of Lords against this decree, and prayed, that the same might be reversed; but upon the answer of the plaintiff *O. Lloyd* to the said appeal, the Lords, on the twenty-fourth of *February* 1777, ordered the appeal to be dismissed, and the decree therein complained of to be affirmed.

LORD



LORD LONSDALE *against* ARNOLD.MICH. TERM,  
16. GEO. 3.

Yorkshire, 12th November 1775.

THE bill stated, that *Lord Lonsdale* had, for six years past, been owner of the great and small tithes of the township of *Molecroft*, in the parish of *Saint John of Beverley*, in the county of *York*, and had, by indenture dated the seventeenth of September 1770, demised the same to the plaintiff *Clark* for nine years; and that by the said demise he was entitled to have all the tithes of hay which had arisen in 1774 in kind. The bill then stated, that the defendants were occupiers of lands and inclosed grounds therein, and on which large quantities of grass had been made into hay; that the said plaintiff, in September 1773, caused notice in writing to be given to the defendants severally, that the tithe of hay within the said township of *Molecroft* would from thenceforth be taken in kind, and that no composition would be accepted in lieu thereof; but that the defendants had refused to set out the same, on pretence that there was some ancient fixed *modus* in lieu of the said tithes.

The impropriator of the tithes of *Molecroft*, in the parish of *Saint John of Beverley*, in *Yorkshire*, is entitled to them in kind.

The defendants admitted, that *Lord Lonsdale* was owner of the tithes of hay yearly arising in *Molecroft*; that he did demise the same to *Clark*; that *Clark* had given such notice in writing; that they occupied lands in the township, and had made hay thereon; and that they were ready to account for the full values of the tithes thereof in 1774, and pay the plaintiff what should appear due to him, disclaiming all pretension to any *modus* or *moduses*, or other composition, payable in lieu of the said tithes of hay, or any other tithes, in respect of or for all or any of the farms, tenements, or lands in their respective possessions.

The cause was, by a rule of court dated the twenty-second of July, ordered to be heard upon the bill and answer.

THE COURT thereupon ordered the deputy remembrancer to take an account of what was due for the tithes of hay for 1774, as demanded by the bill.

BOWLES *against* COMER.MICH. TERM,  
16. GEO. 3.

Somersetshire, 13th December 1775.

THE rector of *Breane*, in the county of *Somerset*, claimed all tithes, both great and small, which had arisen therein ever since *Lady Day* 1772, on a farm occupied by the defendant called *Breane Down Farm*, of the yearly value of six hundred pounds.

The rector of *Breane*, in *Somersetshire*, demands the tithes of *Breane Down Farm*, of the value of 600l. a year, in kind.

BOWLES  
against  
COMER.

The defendant says, there is a former *modus* of 27l. a-year payable in lieu of the tithes of the said farm.

The defendant admitted, that from *Lady Day* 1772 he had occupied *Breane Down Farm*; and he set forth the names of the several closes and fields thereunto belonging; the number of acres they contained; and that the yearly value was five hundred and fifty pounds; and said, that he always used the said farm as a grazing farm; had never grown any corn or grain thereon, nor ever ploughed the same, or intended so to do; but that the whole produce thereof arose from the grazing and feeding of cattle, which he bought in when poor, and kept till fat, and then sold them out again: and he set forth the number he usually grazed; and insisted, that the plaintiff was not entitled to any tithes for such oxen, sheep, and horses, nor had any ever been paid for the said farm; for that all the proprietors, or their farmers or occupiers thereof, had immemorially paid every year, to the rector of *Breane*, the sum of twenty-seven pounds as a *modus* for and in lieu of all tithes arising thereon; and he prayed the like benefit thereof as if he had pleaded the same.

The cause heard.

The plaintiff replied; the defendant rejoined; but no witnesses were examined on either side; and upon hearing counsel on both sides; and reading the answer; and on full debate;

The tithes decreed in kind.

THE COURT ordered the defendant to account for all the tithes demanded by the bill, with costs.

EYRE, *Baron*.  
HOTHAM, *Baron*.

MICH. TERM,  
16. GEO. 3.

HUME against WRIGHT.

*Dorsetshire*, 14th December 1775.

The vicar of *Gillingham*, with the chapelries of *Moticombe, East Over*, and *West Over*, in *Dorsetshire*, annexed, is entitled to the small tithes of the chapelry of *Moticombe* in kind.

THE vicar of *Gillingham*, with the chapels of *Moticombe, East Over*, and *West Over*, in the county of *Dorset*, annexed, claimed the tithes of hay, wool, lambs, and all small tithes, dues, pensions, obventions, and oblations, yearly arising therein.

The defendants admitted, that the plaintiff was vicar, as stated in the bill; but denied that he was, by endowment or otherwise, entitled to the tithe of hay, wool, lambs, and all small tithes within the chapelry of *Moticombe*; and insisted, that in lieu thereof certain *moduses* were payable for the several farms and lands which they rented, as in their answers were particularly described; and that the said *moduses* had been immemorially accepted of in manner aforesaid, without any variation whatsoever. They set forth their several titheable matters and things; and admitted, that about the year 1771 the plaintiff talked of raising their tithes, but had never caused notice to be given to them to set them out in kind till a general notice thereof was fixed on the church door. They further said, that at the time the

the plaintiff accepted the said *modus*, they made no representation touching the validity thereof, believing the same to be valid and binding.

HUME  
against  
WRIGHT.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on both sides ; and upon hearing counsel ; and reading several depositions in the cause ; and several receipts for tithes from the defendant's answer, by consent ; and on debate of the matter ;

THE COURT ordered the defendants to account for all the titheable matters demanded by the bill, but without costs.

EYRE, *Baron*.

HOTHAM, *Baron*.

LAW against BOWYER.

MICH. TERM,  
16. GEO. 3.

*Hertsfordshire, 19th December 1775.*

THE bill stated, that the plaintiff was, in September 1771, presented to the rectory of *Westmill*, in the county of *Hertsford*, and had ever since been rector thereof, and as such was entitled to all tithes therein ; that during three years past, the defendant had occupied divers lands in the parish, whereon had arisen, corn, grain, pulse, and other titheable matters ; that he had depastured thereon cows, sheep, and other cattle ; that he had cut coppice wood, the tithes of which were due to the plaintiff in kind ; that soon after his induction, he was paid a composition of ten pounds yearly, in lieu of all the tithes which had arisen on the said lands ; that he received the same in each year after he became rector down to the twenty-ninth of September 1772 ; that about the twenty-fifth day of September 1772, and after the harvest of that year had been all got in, he gave notice to the defendant that such composition should cease from the twenty-ninth of September then next, and that from thenceforth he would take his tithes in kind ; that from the said twenty-ninth of September 1772, the defendant continued to occupy the said lands ; that since the expiration of the said composition, he had cut and carried away therefrom wheat, rye, barley, oats, pease, beans, and other titheable matters, the tithes of which he had converted to his own use ; that the defendant had refused to pay the same, under a pretence of there being ancient *modus*, &c. ; but the plaintiff charged, that tithes in kind of all titheable matters and things yearly arising on the said lands were due, and ought to be paid to him ; and that the defendant was not exempt from the payment thereof, as appeared by an ancient tithe book in the plaintiff's possession, of *James Taylor*, clerk, formerly rector of *Westmill* ; that in 1609, the tithes of *Westmillbury Farm* were uncertain, as also appeared by an entry in 1710, viz, "*George Hammond, of the Bury* —

The rector of *Westmill*, in *Hertsfordshire*, is entitled to the great and small tithes of *Westmillbury Farm* in kind.

" We



LAW  
against  
BOWYER.

" We are agreed for ten pounds a-year for all his tithes; and I  
" have received for all that is past, and now he must pay every  
" half year five pounds:" by which entry the plaintiff charged,  
that it evidently appeared that the said pretended *modus* or com-  
position then commenced, and that the same can only be consi-  
dered as a temporary composition or agreement, and was never  
entered in the said book, or called a *modus*. The bill therefore  
prayed, that the defendant might be decreed to account for the  
*single value* of the tithes of the said several titheable matters sub-  
tracted by him since the said twenty-ninth of September  
1772.

The defendant admitted, that the plaintiff, as rector of the  
parish, was well entitled to all tithes, both great and small,  
arising therein, or to some *modus* in lieu thereof; that ever since  
the twenty-ninth of September 1770, he had occupied *Westmill-  
bury Farm* and lands as tenant of *J. Houlton*, and also another  
farm and lands of him, and another messuage and tenement and  
lands of which he himself was owner, for the tithes of which two  
last-mentioned farms he had paid several sums of money as  
a *composition* or satisfaction; that *Westmillbury Farm* consisted of  
several acres of meadow, pasture, wood ground, and arable land,  
whereon, for the said year, he had sown wheat, barley, oats,  
tares, and pease; and stated the quantity of grain he had, and  
the number of cattle he fed thereon, and all his other titheable  
matters and things; and said, that the plaintiff did, on the  
twenty-fifth of September 1772, give him notice, that he would  
take his tithes in kind from the twenty-ninth of that month;  
and that he had not set out his tithes pursuant thereto, but had  
refused so to do, because there was, and had been for time  
immemorial, an ancient *modus* or customary payment of ten  
pounds yearly payable at *Michaelmas* in every year, in lieu of  
the tithes of corn and grain, and all other tithes arising upon  
and within the said farm: and he said, that the said farm and  
lands never had paid any tithes in kind; and submitted, that  
he was not liable to the payment of any, unless the said *modus*  
could not be established.

The plaintiff replied; the defendant rejoined; and witnesses  
were examined on both sides; and now upon hearing counsel  
on both sides; and reading the several proofs taken in the cause  
for the defendant, that is to say, several receipts given for the  
payment of the said sum of ten pounds a-year; and the several  
depositions taken in the cause; and reading the following proofs  
for the plaintiff, that is to say, the answer of the defendant; and  
on offering to read the tithe-book of *James Taylor*, clerk, for-  
merly rector of *Westmill*, and particularly mentioned in the bill,  
and the same being objected to by the defendant's counsel, and  
on hearing the plaintiff's counsel in answer, the said objection  
being over ruled; and on reading several entries in the said  
book;

book ; and also several entries in another book, being a book of accounts of *Mr. Brograve* particularly mentioned in the answer ; and on reading several entries in the *Valor. Beneficiorum Ecclesiasticorum*, from the office of the remembrancer of first fruits, taken in the twenty-sixth year of *Henry the Eighth*, relating to the value of the living of *Westmill* ; and on full debate of the matter ;

LAW  
against  
BOWYER.

THE COURT ordered the deputy remembrancer to take an account of what was due for the tithes demanded by his bill, but without costs.

EYRE, *Baron*.  
BURLAND, *Baron*.  
HOTHAM, *Baron*.

TRAVIS *against* OXTON.

MICH. TERM,  
16. GEO. 3.

*Cheshire*, 18th December 1775.

THE bill stated, that the plaintiff was vicar of *East Ham*, in the county of *Cheshire* ; that the vicarage had been immemorially endowed with the tithe of hay, hay grafs, agistment tithes, and all other small tithes arising therein, and in the titheable places thereof ; that the defendants, in the year 1771, held and occupied separate farms and lands in the parish ; that they had mowed thereon large quantities of grafs, and had carried away the hay without setting out the tithes thereof ; and that the defendants *Oxtan* and *Healing* had, in that year, withheld and retained several small tithes. The bill then charged, that the lands severally occupied by the defendants *Oxtan* and *Healing* formed and composed the *Demesne Lands* and township of *Netherpoole* ; that part of the farms occupied by the defendant *Maddock* had been, before the year 1771, inclosed from the ancient waste lands lying in the township of *Whitby*, in the said parish ; that he, the plaintiff, had caused frequent applications to be made to the defendants, requesting them, on his behalf, to make a satisfaction to him for the said tithes ; but that they had severally refused to comply with his request. The bill therefore prayed, that the defendants might account for the said tithes, and severally pay what should appear due thereon.

The vicar of *East Ham*, in *Cheshire*, claims the tithes of hay and all small tithes from the owners of the demesne lands of the townships of *Netherpoole*, *Little Sutton*, *Great Sutton*, and *Whitby*.

See other causes,  
Hilary Term,  
12 Geo. 3. ;  
Hilary Term,  
19. Geo. 3. ;  
and Trinity  
Term, 21. Geo.  
3.

The defendants *Oxtan* and *Healing* admitted, that the plaintiff had been presented by THE CROWN to the vicarage of *East Ham* in the year 1766 ; that in the year 1767, the same became void by his cession thereof ; and that he was again presented thereto by the dean and chapter of *Chester* ; but whether he had been lawfully constituted vicar thereof they left him to prove ; and denied that, to their knowledge, the vicarage had been immemorially

The owners of lands in the township of *Netherpoole* insist on a modus of 40s. a-year, in lieu of all small tithes and other vicarial dues ; of *East Ham*.

morally

TRAVIS  
against  
ORTON.

morially endowed with the tithe of hay and hay grafs, agistment, and all other small tithes, particularly with respect of the lands and hereditaments severally occupied by them, and which, they admitted, composed the *Demefne Lands* or township of *Netherpoole*; and that the said lands were the inheritance of *Sir F. Poole, Bart.* under whom they held the same as farmers and tenants. They all admitted, that the plaintiff, as vicar, was entitled to divers species of tithes arising in some parts of the parish; but by what right they could not tell, he not having set forth in his bill any endowment or other right, and they having never seen any endowment or other evidence of any right under which he was entitled; but they said, he was not, either as vicar or otherwise, entitled to receive the same species of tithes throughout the whole parish, for that he and his predecessors had usually received different species of tithes from different persons, and in respect to different lands in the said parish. They further stated, that the said parish had formerly been called the parish of *Sutton*; that it was then also frequently so called; that it consisted of a rectory impropriate, as well as of a vicarage and of several different manors and townships, viz. the manor and township of *East Ham* with *Plimyard* and *Carlett*, the manor and township of *Hooton*, the township of *Childer Thornton*, the manor and township of *Netherpoole* and *Overpoole*, the manor and townships of *Great Sutton* and *Little Sutton*, and the township of *Whitby*; that at the time the great monasteries were dissolved, in the thirty-third year of *Henry the Eighth*, the said rectory impropriate, then called the rectory of *Sutton*, with the several manors and townships before mentioned, and the tithes belonging thereto, were in the possession of the abbot of *Chester*, as part of the possessions of the great monastery of *Saint Werburgh*, in *Chester*; that the said possessions were then seized into the hands of *Henry the Eighth*; that the said rectory, manors, lands, and townships, or some of the manors and townships, together with several other manors, lands, and hereditaments in the city of *Chester*, were granted by *Queen Elizabeth* on or about the nineteenth day of *December*, in the twenty-second year of her reign, to *Hugh Cholmondeley*, since deceased, under a reserved fee farm rent thereout of one hundred and sixty-eight pounds, nineteen shillings, and tenpence; that she afterwards granted the said rent to the dean and chapter of *Chester*; that the said *Hugh Cholmondeley*, or some of his descendants, afterwards sold and conveyed to different persons several different parts of the said rectory, manors, townships, and lands; that the township of *Netherpoole* consisted only of the *Hall* and the *Demefne Lands*; that the ancestors of *Sir F. Poole* had purchased the said township of the said *Hugh Cholmondeley*, or of some of his descendants, who were entitled thereto under the grant from *Queen Elizabeth*; that *Sir F. Poole* then was, and that he and his ancestors, and those under whom he



TRAVIS  
against  
OXTON.

he claimed, had been, for time immemorial, owners of the said township; that the said *Sir F. Poole*, and those under whom he claimed, had, for time immemorial, had and enjoyed; and that he then held and enjoyed, and was entitled to the tithe of corn, grain, and hay, arising in the said township of *Netherpoole*, as belonging to the said impropriate rectory; that the said *Sir F. Poole* and his ancestors, and those under whom he claimed, and their lessees or tenants, had, for time immemorial, held and enjoyed *the Hall and the Demefne Lands of Netherpoole* exempted from the payment of all small tithes, *Easter* dues, offerings, and other vicarial dues, on payment of a certain immemorial *modus*, pension, or customary payment of forty shillings a-year, at *Easter*, to the vicar of the said parish. The defendants then further stated, that part of the said parish, called the township of *Overpoole*, was, all of it, they believed, the estate and inheritance of the said *Sir F. Poole*; that he and his ancestors, and those under whom he claimed, had, for time immemorial, been entitled to, and had taken all the tithes of corn and grain within *Overpoole*, as belonging to the said rectory impropriate; and that the vicars of the parish had immemorially, or for some long time, by virtue of some endowment or prescription or otherwise, received, taken, and enjoyed the tithes of hay, and all small tithes in kind, arising within *Overpoole*, or some payment in lieu thereof. The defendants then further stated, that the vicars of the said parish had, by virtue of some endowment or prescription or otherwise, had and taken, and that the plaintiff, as vicar, was then, by virtue of some endowment or prescription or otherwise, entitled to, and had taken, the tithes in kind of hay and hay grafs, and *Easter* dues, and other small tithes, in several parts of the parish; that in other parts he was not entitled to any tithe of hay, but only to small tithes and vicarial dues; and that in other parts he was entitled to some *modus*es or payments in lieu of such small or vicarial tithes or dues. They further said, that they did not know whether the plaintiff, as vicar of the said parish, was entitled, by virtue of any endowment, prescription, or otherwise; or whether he had taken the tithe of agistment in any part of the parish; or whether the former vicars were entitled to, or had taken the same. They denied, that the vicarage had ever been endowed with the tithes of hay, hay grafs, agistment, or any small tithes, throughout the whole of the parish; and insisted, that he was only so endowed out of particular townships or places therein; that the vicars had only taken and enjoyed such tithes partially from and out of particular parts of the parish; that in other parts thereof, the persons entitled to the rectory were entitled to and had enjoyed the tithes of hay, hay grafs, and agistment tithes; and that they the defendants, as tenants to the present impropriator, were entitled to all the tithes of hay and hay grafs arising on the lands occupied by them respectively within the said parish,

TRAVIS  
against  
OLTON.

as the same were part of the *Demefne Lands* of *Netherpoole*. They admitted, that they had, in the year 1771, occupied the said *Demefne Lands* of *Netherpoole*, as also the *Hall Houfe*, called *Pool Hall*, and the *Dairy Houfe*; and set forth the quantity of land from which they had in that year mowed hay and hay grafs; and admitted, that they had carried the hay thereof away, without fetting out the tithe, or making the plaintiff any fatisfaction for the same, which they insisted they had a right to do, as the tenants of the said *Sir F. Poole*, who claimed the great tithes of the *Demefne Lands* as part of the rectory impropriate. They also admitted, that in the said year they withheld all their small tithes, without making the plaintiff any fatisfaction for the same, as they believed no small tithes whatever had ever been paid to any vicar for the parish for the *Demefne Lands*; and they insisted, that none were due for the said lands, except the said yearly fum of forty shillings in lieu thereof; and that the vicars had till that year received the same in full fatisfaction for the small tithes or other vicarial dues of the said *Demefne Lands*.

The landholders  
of *Little Sutton*  
fay the like as  
to tithe hay;  
and that certain  
*modus* are due  
in lieu of small  
tithes.

The defendant *Whitehead* stated in substance the same matters relating to the plaintiff's being instituted vicar as the other defendants had done; and denied, that the vicarage was endowed with the tithe of hay and hay grafs, or that he was entitled to the same from the tenements and lands he occupied in the said year in the township of *Little Sutton*; and he described the lands and the number of acres they contained; and said, that they were all anciently the estates and inheritance of the said *Cholmondeley Family* under the afore-mentioned grant; stating the title fully in his answer, as the other defendant had done. He further said, that the plaintiff had sometimes at *Easter*, when he received his *Easter* dues, received some payment for some kinds of small tithes in respect of those his tenements which were no part of the *Demefne Lands*, viz. for every milch cow, three halfpence; every farrow cow, one penny; for a servant, twopence; offerings for himself, threepence; for the rest of his family, sixpence; and one penny, called the *house penny* or *smoke penny*, in lieu of all tithes of firewood or other things used and consumed in the house, and for all personal tithes due from any of the inhabitants of the house (except *Easter offerings*); a garden penny, in lieu of all tithes of fruit and garden stuff; an hen penny, in lieu of fowls and eggs; and a *tithe penny*, otherwise *tin penny*, otherwise *tithing penny*, as a *modus* in lieu of all other small tithes and vicarial dues in kind, not at times taken in kind, and therein excepted, as being so taken in kind as aforesaid, and except offerings; and therefore he insisted, that the plaintiff was not entitled to any other small tithes arising within the said parish. He admitted, that in the year 1771 he had cut hay and hay grafs upon his said lands, and had carried the same away, without fetting out the tithe thereof,

or

or making any satisfaction for the same; and he insisted, that he had a good right so to do, the plaintiff not having any right thereto. He further said, that he had tendered the several *modus*es or customary payments to the vicar.

TRAVIS  
against  
OXTON.

The defendant *Davies* stated the same in respect of the tenements and lands occupied by him in the township of *Great Sutton*.

The landholders  
of *Great Sutton*  
answer in like  
manner.

The defendant *Whitehead* put in the like answer for her tenements and lands lying in the township of *Great Sutton*.

The defendant *Maddock* put in the like answer for his farm and lands in the township of *Whitby*. He further said, that no tithe hay in kind had ever been paid or was payable to the vicar of *East Ham* for many of the lands heretofore part of any of the tenements called *Robinson's Tenement*, *Salmon's Tenement*, or *Lightfoot's Tenement*; but that in lieu thereof there had been annually paid by the occupiers of the said tenements respectively to the vicar the following *modus*es: the sum of one penny, in lieu of the tithes of all the hay yearly arising on *Robinson's Tenement*; of one penny, in lieu of tithe hay of *Salmon's Tenement*; and the same for *Lightfoot's Tenement*; that the said *modus*es so paid had been usually called *tilt penny* by the vicars of the parish and by others; that the same was payable by the occupiers of the said three tenements respectively to the vicar annually at *Easter* (a); and that the plaintiff had received the same to *Easter* 1771; and he set forth the various other lands which he occupied, and which of them paid tithe hay, and which were exempt from such payment; and averred, that he did not believe that any part of the separate farms occupied by him were, at any time within the memory of man, inclosed from the ancient common or waste lands lying within that part of *Whitby* as was within the parish of *East Ham*.

The landholders  
of *Whitby* say,  
that a tithe pen-  
ny is payable in  
lieu of all tithe  
hay arising an-  
nually on *Ro-  
binson's Tenement*,  
on *Salmon's Te-  
nement*, and on  
*Lightfoot's Ten-  
ement* respective-  
ly.

The plaintiff replied; the defendants rejoined; and witnesses were examined for all parties; and the cause was, on the thirteenth day of *July* 1775, heard by counsel for several days; when, after over-ruling an objection that the impropiator ought to have been a party to the bill; and reading, for the plaintiff, several depositions; the answers; a proved copy of an *inquisition post mortem* of *James Pulle*, taken in the first year of *Edward the Second*, from the original remaining in THE TOWER OF LONDON; the copy of an *inquisition post mortem* of *Thomas Pulle*, taken in the first year of *Henry the Eighth*; another of *Thomas Poole*, taken in the third year of *Queen Elizabeth*, taken from the originals remaining in the court of exchequer at *Chester*; an exhibit marked P, in the custody of the dean and chapter of *Chester*, and proved; a copy of the rental of the possessions of the abbey of

The cause heard  
for several days.

(a) This *modus* was adjudged void for uncertainty. See Anstruther's Reports.  
Saint



TRAVIS  
against  
OXTON.

Objection to  
evidence over-  
ruled.

Objection to  
evidence over-  
ruled.

Objection to  
evidence over-  
ruled.

*Saint Werburgh*, in the city of *Chester*, taken in the tenth year of *Henry the Sixth*, from the court of exchequer in *Chester*, an objection having been made to the reading of it, and over-ruled; certain papers bound in a book now in the *Archbishop of Canterbury's* library at *Lambeth*, which book is indorsed, "*Survey of Church Lands, Anno 1649, Vol. 3d,*" the reading of which was objected to by the defendant's counsel, and the objection over-ruled; a book of assessments of church levies for *East Ham* in the year 1732, and proved, the reading whereof was objected to, and the objection over-ruled; a copy of an act of parliament made and passed in the sixth year of *King George the Second*, for vesting part of the real estate of *Charles Cholmondeley, Esq.* in the county of *Chester*, in trustees, to be sold for payment of debts and other purposes; several depositions of witnesses on behalf of the plaintiff; and hearing his counsel; and upon hearing the defendants counsel; and reading the following evidence on their behalf; the depositions of several witnesses; several receipts, signed by *Honor Le Beg* and the plaintiff to *Sir F. Poole*; a copy of a grant dated the fifth of *August*, in the thirty-third year of *Henry the Eighth*, from the said *Sir F. Poole* to the dean and chapter of *Chester*, such copy being taken from the original grant in THE CHAPEL OF THE ROLLS; the copy of a licence by letters patent, dated the fourteenth of *May*, in the seventh year of *Edward the Sixth*, thereby empowering the said dean and chapter of *Chester* to alienate certain estates to *Sir Richard Cotton, Knt.* in fee, taken from the original licence or letters patent in THE ROLLS CHAPEL; an indenture of bargain and sale, dated the second of *November*, in the seventh year of *Queen Elizabeth*, between *George Cotton*, the son and heir of *Sir Richard Cotton, Knt.* deceased, of the one part, and *Sir H. Cholmondeley* and *Thomas Brown* of the other part; an indenture dated the thirty-first of *May*, in the sixteenth year of *Queen Elizabeth*, between *G. Cotton* and *Sir R. Stanley*; an entry from the registry of the diocese of the institution of the *Bishop of Chester* of *George Beckett* to the vicarage of *East Ham*, on the presentation of *Sir William Stanley, Bart.* dated the nineteenth of *June* 1666; an indenture of mortgage, dated the twenty ninth of *September* 1699, of the tithes of corn and hay in *Great Sutton* and *Little Sutton*, from *Thomas Cholmondeley* to *Dame Isabella Chickley* for sixty-five years; an indenture, being an assignment of the said mortgage from *Chickley* to *F. Cholmondeley* in trust for *Parker*, dated the twentieth of *November* 1705; and a deed of assignment thereof, dated the fourth of *November* 1709, from *Parker* to *Hunt*; another, dated the twenty-third of *January* 1716, from *Hunt* to *Ashton*; an instrument of surrender, dated the twenty-third of *May* 1724, by indorsement on the said last-mentioned indenture of assignment from *Ashton* of the said mortgage to merge it in the inheritance; indentures of mortgage in fee from *Charles Cholmondeley* to *Knight*, of *Sutton Hall* and

and its demesnes, and the tithes of corn, grain, and hay, within *Little Sutton*, dated the twenty-first and twenty-second of *February* 1708; indentures of the said mortgage, dated the first and second of *May* 1721, from *Knight* to *Tidy* and *Harvy*; indentures dated the fifteenth and sixteenth of *May* 1724, being a re-conveyance of the said mortgage to *Cholmondeley* in fee; an indenture dated the eighteenth of *October* 1752, being a release in fee from *Charles Cholmondeley*, his mortgagees and trustees, to *Sir Francis Poole, Bart.* of an yearly fee-farm rent theretofore payable for ever to the said *Charles Cholmondeley* and his heirs, in lieu of the tithes of *Netherpoole* and *Overpoole*, the estates of the said *Sir Francis Poole*; a copy of an act of parliament for sale of part of the real estates of *Charles Cholmondeley*, made and passed in the sixth year of *King George the Second*; and on reading evidence for the defendant *Maddock*, THAT IS TO SAY, an original terrier of the said vicarage of *East Ham*, made in the year 1696; another, dated the twenty-fourth of *May* 1709; and a receipt for tithes, signed by the plaintiff *George Travis*, dated the sixth of *November* 1773; and on hearing the plaintiff's counsel in reply; and on reading the following evidence in reply, viz. an exemplification dated the eleventh of *January*, in the fourth year of *William and Mary*; of letters patent, dated the nineteenth of *December*, in the twenty-second year of *Queen Elizabeth*, to *George Calveley* and others; letters patent granted to the dean and chapter of *Chester*, dated the twenty-second of *December*, in the twenty-second year of *Queen Elizabeth*; and on the plaintiff offering to read in evidence an entry in the chapter-book of the dean and chapter of *Chester*, dated the sixteenth of *May* 1666, and the reading thereof being objected to by the counsel for the defendants; and the said objection being allowed by the Court; the cause was ordered to stand over to a future day for the further consideration of the court; and the cause now standing in the paper of causes;

TRAVIS  
against  
OXTON.

Objection to  
evidence allow-  
ed.

THE COURT ordered a trial at law to try, whether there was such a *modus* as laid in the answers of the defendants *John Oxton* and *John Healing*. The action to be tried by a special jury of the county of *Salop*, and the defendants in equity to be plaintiffs at law. The Court further ordered, that if the jurors should find a *modus* different from that alledged in the answers, or if any other special matter should arise, the judge who should try the issue should indorse the special matter on the *posse*: costs and all further directions to be reserved.

An issue directed to try the *modus* of 40s a-year in lieu of the small tithes of the *Demesne Lands* of *Netherpoole*.

THE COURT also ordered the defendants *W. Whitehead*, *R. Davies*, and *E. Bateman*, to account for the tithe of hay demanded by the said bill, and pay the plaintiff his costs to this time respectively.

The landholders of *Little Sutton*, *Great Sutton*, and *Whitby*, ordered to account with the vicar for the tithe of hay.

TRAVIS  
against  
OXTON.

The landholders in the townships of *Neiberpool* obtain a rehearing; but the decree directing the issue was thereupon confirmed.

THE COURT also ordered the defendant *J. Maddock* to account for the tithe of hay without costs.

The defendant *Oxtan* and others, on the twenty-third of *January 1777*, the defendant *Whitehead* being dead, petitioned for a re-hearing; and it was on the same day granted, upon the defendants making the usual deposit.

The plaintiff revived the suit against the executors of *Whitehead*; and on the sixteenth day of *April 1777*, on the application of the executors, the original cause was also ordered to be reheard as to them.

The cause came on accordingly to be reheard; and upon hearing counsel several days, and reading the proofs and exhibits which had been read on the former hearing; and on reading, on behalf of the plaintiff, two terriers of the parish of *East Ham*, remaining in the consistory court of the *Bishop of Chester*, the one of them taken in the year 1696, the other in 1709, and the following additional evidence on behalf of the defendants, THAT IS TO SAY, several depositions taken in the cause; an exhibit marked L, being by an order of this court to be produced at the rehearing, viz. "A Table of Tithes due in the Parish of *East Ham*, accordingly as they have been formerly received by *William Seddon* and *George Beckett*, Vicars of the Parish of *East Ham*;" and upon fully hearing counsel for all parties; the cause was ordered to stand over; and on the first of *July 1777*, standing for the judgment of the Court;

THE COURT ordered the decree of the eighteenth of *December 1775* to be affirmed, and the deposit to be paid to the plaintiff or his clerk in court.

The landholders of *Little Sutton*, *Great Sutton*, and *Witby*, appeal to the House of Lords; and the decree entitling the vicar of *East Ham* to the tithe of hay reversed; and an issue ordered to try, whether the *tilt penny* was paid to the vicar in lieu of tithe hay.

The defendant *Thomas Whitehead* appealed to THE HOUSE OF LORDS against the decree of the eighteenth of *December 1775*, and the affirming decree of the first of *July 1777*, as far as the same related to him; and on the third of *February 1779*, the said decrees were reversed, and the court of exchequer ordered to direct a trial to be had at the next assizes for the county of *Salop*, or at such other time as the said court should think fit, upon the following issue, "Whether the *tilt penny* paid by the occupiers of houses within the townships of *Great Sutton* and *Little Sutton*, to the vicar of the parish of *East Ham*, had been paid and accepted as a *modus* or composition in lieu and satisfaction of tithe hay." The Judge to be at liberty to indorse on THE POSTEA any *modus* which the jury shall find respecting the payment of the said *tilt penny*; and further directions to be reserved till after the trial.

The issue settled, and appointed for trial accordingly.

THE COURT, on the twenty-third of *February 1779*, ordered the issue to be tried at the next summer assizes for the county of *Salop*



*Salop* by a special jury; the issue, if the parties differ in settling it, to be settled by the deputy remembrancer.

Issues were made up and tried; and on the issues directed by THE COURT OF EXCHEQUER, the jurors found, that the yearly "sum of forty shillings had immemorially been paid by the "owners or occupiers of the *Demefne Lands* of *Netherpoole*, within "the said parish of *East Ham*, in the said county of *Chester*, "to the vicar of the said parish for the time being, as a *modus*, "pension, or customary payment in lieu of all small tithes, "oblations, and other dues, to the said vicars of the said parish "yearly arising on the *Demefne Lands*." And on the issue directed by THE HOUSE OF LORDS, "That the *tilt penny*, paid by "the occupiers of houses within the townships of *Great Sutton* "and *Little Sutton* to the vicar of the parish of *East Ham*, had "been paid and accepted as a *modus* or composition in lieu and "satisfaction of tithe hay;"

A new trial was moved for on the last issue, and refused; and on the twenty-fifth of November 1779, the cause came on to be further heard upon the equity reserved; and on reading the several decrees and *postea*; and hearing counsel on both sides;

THE COURT ordered the defendants *Oxton* and *Healing* to pay the arrears of the *modus* found by the said first-mentioned verdict; and, on their undertaking so to do, that the said bill be dismissed as against them, without costs either at law or in equity;

THE COURT further ordered the deputy remembrancer to take an account of what was due from *Whitehead*, *Davies*, and *Bateman* respectively for the tithes in kind of hay demanded by the bill; and that the said *Whitehead*, *Davies*, and *Bateman* do severally pay what should be reported due to the plaintiff on account thereof, together with his costs both at law and in equity with respect to the tithe of hay.

#### TRAVIS against MASON.

*Cheshire*, 20th February 1776.

THE vicar of *East Ham*, in the county of *Cheshire*, claimed, by endowment, prescription, or immemorial custom, the tithes of hay, hay grafs, agistment, and other small tithes arising therein; and stated, that the defendants for several years past, and particularly in the year 1773, had held and occupied land therein; that they had fed and depastured divers oxen, bullocks, runts, saddle and other horses, colts, and heifers therein; that the colts and heifers were sold before they became proper *Sutton*, *Little Sutton*, and *East Ham*, in the said parish. See other causes, 12. Geo. 3.; Hilary Term, 19. Geo. 3.; and Trinity Term, 21. Geo. 3.

M m 2

for

#### TRAVIS against OXTON.

A verdict that 40s. a-year are payable yearly in lieu of the small tithes of the *Demefne Lands* of *Netherpoole*;

another verdict that the *tilt penny* was paid to the vicar in lieu of the tithes of hay.

A new trial refused on the last verdict.

The landholders of *Netherpoole* ordered to pay according to the *modus* of 40s. a-year.

The landholders of *Little Sutton*, *Great Sutton*, and *Whitby*, ordered to pay the vicar of *East Ham* the tithes of hay in kind.

#### HILARY TERM 16. GEO. 3.

The vicar of *East Ham*, in *Cheshire*, is entitled to agistment tithes for all barren and unprofitable cattle fed on lands in the several townships of *Great* Hilary Term,

TRAVIS  
against  
MASON.

for the plough and pail; that they had also fed wether sheep and other cattle, which were unprofitable to the plaintiff; that the defendant *Urmson* in particular had depastured divers horses let out by her for hire, guest horses, and cattle taken in to feed at a certain price by the week; but that both he and the other defendant had refused to discover or pay the tithes thereof. The bill therefore prayed an account and payment.

The defendant *Mason* admitted, that the plaintiff had been presented to the vicarage of *East Ham* in the year 1767; but denied that, to his knowledge, he had been legally instituted therein; and said, that he was endowed with all tithe hay, and entitled to tithe agistment throughout the whole parish; that his predecessors had usually received different species of tithes, in respect of different lands; that the parish of *East Ham* was frequently now, and always formerly called "the Parish of *Sutton*," or "the Rectory and church of *Sutton*, in *Wirrall*;" that the said parish consisted of a rectory impropriate, comprising the said vicarage and the church of *East Ham*, and including the several different manors, demesnes, and townships, as in the said answer was mentioned; that the whole thereof was within the hundred of *Wirrall*; that in the thirty-third year of *Henry the Eighth*, when the greater monasteries were dissolved, the rectory impropriate of the said parish, then called, "the Rectory of *Sutton*," or "the Rectory and church of *Sutton*, in *Wirrall*," with the said manors and demesnes, and all the other lands and tenements within the township of *Great Sutton* and *Little Sutton*, and also all the tithes of and in the said parish, and belonging to the said rectory, and arising within all and every the said several demesnes and townships (except such particular parts of the said tithes which the vicars of the parish had in particular parts thereof usually taken in kind, or received certain *modus*es for), were wholly in the possession of the abbot of *Chester*, as part of the possessions of the great abbey of *Saint Werburgh*; that the same were then seized into the hands of *Henry the Eighth*; that *Henry the Eighth*, in the thirty-third year of his reign, granted the said rectory impropriate, and the tithes thereof, and the said manor, demesnes, and all other the lands and tenements and tithes within *Great Sutton* and *Little Sutton* to the dean and chapter of *Chester*; that the dean and chapter, in the seventh year of *Edward the Sixth*, alienated all the said rectory, tithes, and estates so granted to *Sir Richard Cotton* and his heirs, under the reservation of a considerable fee-farm rent payable to them and their successors in respect of the same; that in the seventh year of *Queen Elizabeth*, the said rectory and tithes, and the advowson of the said church, with the said manor, demesnes, and townships of *Great Sutton* and *Little Sutton*, and the tithes thereof, were conveyed by *George Cotton* the son to *Sir Hugh Cholmondeley* and his heirs; that for the better establishing

TRAVIS  
against  
MASON.

blishing the said alienation, *Queen Elizabeth*, in the twenty-second year of her reign, further granted the said rectory, tithes, manors, and premises, so first granted, to *Hugh Cholmondeley* and his heirs; that the said *Hugh Cholmondeley*, or some of his descendants had conveyed to different persons different parts of the said rectory, particularly all the townships of *Great Sutton* and *Little Sutton*, except the *Demefnes* and *Motherless Heath*; that in the year 1733, *Charles Cholmondeley* and his trustees, by virtue of an act of parliament, sold to *Puleston Watt* and his heirs for ever, a certain messuage and lands, to hold the same under the reservation of one pound, six shillings, and fivepence, to the said *Charles Cholmondeley* and his heirs for ever: that he, the defendant, was the grandson of the said *Puleston Watt*, and owner of the inheritance of the said messuages and lands which he held in the said parish; that the said *Hugh Cholmondeley* and his descendants, since the said grants of the said rectory, had hitherto as the impropiators thereof, constantly enjoyed, and now claimed to enjoy in severalty, all the tithes of corn, grain, hay, agistment, and all small tithes, throughout the said township, except certain *modus*es in lieu of the tithes of milk and farrow cows, and such other *modus*es for other small tithes as were after-mentioned, and except the tithes in kind of pigs, geese, wool, and lambs only; that the vicars of the said parish had never been endowed with, or until the present instance had ever claimed, any tithes of hay nor agistment within any part of *Great Sutton* or *Little Sutton*; that the said *Charles Cholmondeley* and his trustees, by virtue of the said act, sold the tithes of corn, grain, hay, hay grafs, agistment, and all other tithes not thentofore taken in kind by the said vicars, according to an ancient custom there issuing from or inherent to the said lands and tenements within *Great Sutton*, to the said *Puleston Watt* and the other purchasors in severalty with, and as incident and inherent to the said lands, &c. as being part of the said impropriate rectory and the estates formerly of the said abbot; and that they had immemorially enjoyed all tithes of hay grafs and agistment, and all other small tithes not taken in kind by the vicars, being impropriate and abbey lands; that he, the defendant was exempt from the payment of the agistment or other tithes claimed by the bill, by virtue of such title; and that the vicars of the said parish had taken tithes in kind for hay, and some satisfaction for agistment, in some of the townships, but had never taken the same in *Great Sutton* or *Little Sutton*. The answer then stated, that the church of *East Ham* was anciently a chapel only appropriated to the abbey, and was not a parochial church; that it was not ordained or created a vicarage until after the reign of *Richard the First*; that it was not endowed with any temporalities or tithes whatsoever. The defendant admitted, that in the year 1773 he had depastured on his lands in *Great Sutton* a few feeding cows, which were not



TRAVIS  
against  
MASON.

See Anstruther's  
Reports, vol. i.  
page 308 *notis.*

either milch cows or farrow or barren cows, or used, or intended to be used, either for the plough or the pail, without making any satisfaction to the plaintiff for the tithe of agistment thereof; and insisted, that he had a good right so to do, the vicar having no right to the tithes of such feeding, the cows not being milch, farrow, or barren milch cows; and he having in himself a good right to the same, as owner of the tenement and lands so occupied by him, and which he claimed to hold discharged from the payment of any tithes of hay, grass, or agistment tithe whatsoever, or any satisfaction in lieu thereof to the plaintiff, for the reasons aforesaid. The defendant then stated, that he was not answerable to the plaintiff for any tithes of cows or other cattle depastured on his lands, save three halfpence for every milch cow, and one penny for every farrow cow or barren milch cow; and insisted, that he was not obliged to account; but he said, that if the plaintiff should establish his right, he submitted to be examined. He admitted, that the plaintiff demanded of him one shilling each for the six feeding cows aforesaid depastured on his lands in 1773 for the agistment tithes thereof, which he had refused to pay, and had tendered him the three halfpence for each cow, but which he had refused to accept. He further said, that the occupiers of land in *Great Sutton* had yearly paid at *Easter*, to the vicar, certain *modus*es of three halfpence for every milch cow, and one penny for every barren cow, and no more, or any other compensation whatsoever for such cattle, or the milk or produce thereof; that they had also paid fourpence for every young colt; that the said vicars had usually received from every householder and occupier of lands in *Great Sutton* certain offerings of threepence for each head of a house, and twopence for each child or servant, but that the plaintiff had varied the said payments; that for all tithes whatsoever due to the vicars from the townships of *Great Sutton* and *Little Sutton* (except the said tithes and *modus*es aforesaid), there had been paid yearly to the vicar, by every occupier of land therein, four several yearly payments at *Easter* of one penny each, called *the smoke penny*, *the garden penny*, *the hen penny*, and *the tilt penny*, being *modus*es in lieu of all small tithes in respect of *fire wood*, and for all *personal tithes* due from the inhabitants, except *Easter offerings*, fruit, and garden stuff, fowls, eggs, and of all other tithes in kind, or other claims in respect thereof.

The defendant *Urmsen* answered to the same effect as to her lands in the townships of *East Ham* and *Hooton* within the said parish; stated the said *modus*es for her milch and farrow cows payable at *Easter* (*the Demesne Lands* excepted); said, that she had never paid to the plaintiff, or to any other vicar, any agistment tithe for any of the lands in her holding (under *Sir William Stanley*, the owner of the inheritance thereof), or any satisfaction whatever in lieu thereof, other than such *modus*es for milch

milch or farrow cows ; and insisted, that the plaintiff had not any right thereto, or to any species of tithes, or any payments in lieu thereof throughout the said townships, other than such as the said vicars had heretofore, according to the customs therein, usually received.

TRAVIS  
against  
MASON.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on both sides ; and upon hearing counsel ; and reading for the plaintiff several depositions ; an order to produce and read exhibits, &c. ; a terrier of the vicarage of *East Ham*, dated 1696 ; another, dated in 1709, both from the episcopal registry of *Chester* ; the copy of a licence, dated in the seventh year of *Edward the Sixth*, granted to the dean and chapter of *Chester*, to alienate the premises therein mentioned ; a surrender from the said dean, &c. to *Queen Elizabeth*, in the twenty-first year of her reign ; another surrender from *George Cotton* to the said queen, in the twenty-second year of her reign, from THE ROLLS CHAPEL ; the exemplification of a grant in the twenty-second year of *Queen Elizabeth* to *George Cotton* and others ; a grant from the said queen to the said dean and chapter, in the twenty-second year of her reign ; the chapter-book of the said dean and chapter from 1648 to 1673 ; the exemplification of a recovery in the sixteenth year of *George the Second*, between *Cholmondeley* and *Lloyd*, of the manor of *Hooton* and other villis therein mentioned ; and on hearing counsel for the defendants ; and reading several depositions of witnesses taken on their behalf ; the copy of a grant, dated the thirty-third year of *Henry the Eighth* ; the copy of a licence, dated the seventh year of *Edward the Sixth* ; a grant from *Cotton* to *Sir H. Cholmondeley* and *Thomas Brown*, dated the second of *November*, in the seventh year of *Queen Elizabeth* ; and the said queen's grant to *Calveley* and others, dated the nineteenth of *December*, in the twenty-second year of her reign ; the like to the dean and chapter of *Chester*, in the twenty-second year of her reign ; a grant from *Henry Mainwaring* to *Robert Cholmondeley*, dated the twentieth of *September*, in the eighth year of *James the First* ; a grant from *Cotton* to *Stanley*, dated the thirty-first of *May* 1574 ; a copy of the institution of *Beckett*, dated in *July* 1666 ; a deed of settlement of *Lord Viscount Cholmondeley*, dated the first of *July* 1634 ; a deed to lead the uses of a recovery, by *Thomas Cholmondeley*, dated the eleventh of *July* 1662 ; the said recovery, dated the twenty-eighth of *July* 1667 ; an indenture of mortgage from *Thomas Cholmondeley* to *Chicheley*, dated the twenty-ninth of *September* 1694 ; a deed of assignment thereof, in trust for *Parker*, dated the twentieth of *November* 1705 ; an assignment thereof to *Hunt*, dated the fourth of *October* 1709 ; and another assignment thereof to *Ashton*, dated the twentieth of *January* 1716 ; a surrender of the said mortgage, dated the twenty-third of *May* 1734 ; the copy of an act of parliament made and passed in the

TRAVIS  
against  
MASON.

sixth year of *George the Second*, for sale of certain estates of *Mr. Cholmondeley*; a grant from *Cotton* to *Leeke*, dated the fifteenth of *November*, in the eighth year of *Queen Elizabeth*; a release from *Leeke* to *Sir Rowland Stanley*, dated the sixteenth of *November*, in the twenty-fifth year of *Queen Elizabeth*; and on reading four receipts, signed by the plaintiff, to *John Edwards* and *John Hiquett* in 1771; and two others to *Urmson* in 1770 and 1772; and on full debate of the matter;

THE COURT ordered the deputy remembrancer to take an account of what was due for the tithes of agistment of barren and unprofitable cattle fed and agisted by the defendants on the lands by them respectively occupied within the parish of *East Ham* demanded by the bill, with costs of suit.

The deputy made his report, dated the twentieth of *June* 1780; and on the twenty-seventh of the same month it was confirmed, with subsequent costs.

HILARY TERM  
16. GEO. 3.

- DAY against LAKE; et à Contra.

*Essex*, 8th February 1776.

The landholders of *Roydon*, in *Essex*, pay certain *modus* in lieu of the tithes of lambs, pigs, and wool, and particularly 4d. a year for every cow and calf, and 2d. a year for every farr cow, at *Lammas*, in lieu of the tithes of cow, calf, and milk.

THE vicar of *Roydon*, in the county of *Essex*, claimed all the small tithes yearly arising therein.

The defendant set up the following *modus* of fourpence yearly for every cow and calf fed and depastured in the parish, in lieu of the tithes of milk and calves; twopence for every farr milch cow, in lieu of the agistment tithes of such farrow cow; sixpence for every lamb depastured in the *Inclosures* of the parish, in lieu of tithes of lambs; fourpence for every lamb depastured in the *Commons and Lanes* of the parish, in lieu of tithes of such lambs; two shillings and sixpence for the sow of any inhabitant, in lieu of the tithe pig; one penny for every sheep fed in the parish, in lieu of the tithe wool of such sheep; and admitted, that the vicar was entitled to tithes of other matters in kind.

The said *G. Lake* filed a *cross bill* against *William Day* the vicar, and *Lord Tilney* the impropiator of the parish, stating, that the *modus* of fourpence in lieu of milch and farrow cows were payable at *Lammas* yearly; that there was a *terrier* of the *glebe lands*, houses, tithes, and pensions belonging to the vicarage, made the twenty-ninth day of *September* 1610, and remaining in the registry of the consistory court of *London*, in which, amongst other items therein contained relating to the rights of the vicar, there was the following: "ITEM, He is to have for milch beasts  
" fourpence for the cow and calf, and for every farr milch cow  
" twopence, to be paid at *Lammas*;" that the former vicars of the parish had immemorially accepted of the said *modus*; that  
since



since *Mr. Day* became the vicar, he had received a general composition at *Michaelmas* yearly, in lieu of the said *modus*, and of all tithes that were payable in kind ; and he prayed, that his witnesses might be examined, and their testimony perpetuated to prove and establish the said *modus*.

DAY  
against  
LAKE ;  
et à Contra.

The vicar denied, that the *modus* stated, or any other *modus*, had been immemorially paid, or were payable in lieu of the tithes in kind of milch and farrow cows ; but he admitted, that he had seen a copy of the said terrier, and that it contained the items set forth ; but he put the plaintiff to prove the existence of the *modus*.

The impropiator admitted the *modus* as stated in the cross bill.

The plaintiff replied to the vicar's answer ; and the defendant rejoined ; and on hearing the causes together, no counsel appearing for the vicar, though he had been served with a *subpoena* ;

THE COURT ordered the original bill to be dismissed with costs ; but on hearing counsel in the cross cause for all parties ; and reading the terrier ; and the depositions in the original cause ; a trial at law was ordered to be had upon the following issues :

FIRST, "Whether, for time whereof the memory of man is not to the contrary, a *modus* or customary payment of fourpence hath been paid and payable, at *Lammas* in each year, to the vicar for the time being of the parish of *Roydon*, in the county of *Essex*, in lieu of the tithes in kind of milk and calves for each cow and calf of every occupier of lands in the said parish, fed and depastured within the said parish or the titheable places thereof."

SECONDLY, "Whether, for time whereof the memory of man is not to the contrary, a *modus* or customary payment of twopence for each and every farr milch cow or farrow cow hath been paid and payable, at *Lammas* yearly, to the vicar for the time being of the said parish of *Roydon*, for and in lieu of the agistment tithe of every such farr, milch, or farrow cow of every occupier of lands within the said parish fed and depastured within the said parish and the titheable places thereof."

The occupier *Lake* to be plaintiff at law, and the vicar to be defendant : the Judge to indorse, &c. ; and costs to be reserved till after the trial.

On the seventh of June 1776, the issues were ordered to be taken as confessed by the vicar, unless cause were shewn to the contrary, the plaintiff having tendered the issues, and the defendant

DAY  
against  
LAKE;  
et Contra.

defendant having neglected to enter an appearance thereto; and no cause being shewn;

THE COURT, on the sixth of July following, dismissed the bill without costs (a).

SMYTHE, *Chief Baron.*  
EYRE, *Baron.*  
HOTHAM, *Baron.*

(a) The original bill was filed in Hilary Term, 2. Geo. 3. and the cross bill in Hilary Term, 14. Geo. 3.

EASTER TERM,  
16. GEO. 3.

QUICKE against LANE.

Devonshire, 25th April 1776.

The rector of *Morchard Bishop*, in *Devonshire*, claims the tithes of the hay, clover, and ever-grass, which had arisen on the defendant's three farms called *Higher Spatecott*, *Lower Spatecott*, and *Middle Week*; and insists, that the pretended *modus* in lieu of the tithes of *Ancient Stint Meadows* are void for uncertainty, the term "*Ancient Stint Meadow*" not conveying any clear idea, and affording an opportunity to the land owner to deprive him of his just tithes; stating instances in which it had been practised;

and charging, that all the defendant's lands were liable to pay tithe hay in kind;

THE rector of *Morchard Bishop*, otherwise *Bishop Morchard*, in the county of *Surry*, claimed both the great and small tithes yearly arising therein; and stated, that the defendant had, for many years past, occupied land in the parish; that since 1770 he had yearly cut hay, clover, and ever grass thereon, the tithe of which he had refused to pay, under pretence of *modus* being payable in lieu thereof. The bill then stated, that it was generally reputed that yearly sums were payable to the rector, at *Easter*, in lieu of tithe hay arising from certain *ancient stint meadows* as *modus*; but the plaintiff insisted, they were void for uncertainty; the term "an ancient stint meadow" not conveying a clear idea of what is meant thereby, nor being well understood in the said parish, and thereby affording to the occupiers of lands therein an opportunity of withholding from the rector tithes of hay on such lands as did not really fall under the denomination of ancient stint meadow. The bill then charged, that the defendant and several other occupiers of land within the rectory and parish, had set up the like *modus*, and insisted on divers particular lands in their respective occupation, as being ancient stint meadows, although the said lands had, within a few years past, been wholly converted into meadow, or had been greatly increased in extent and quantity, by adding thereto parcels of the adjoining lands which were not ancient stint meadows. The bill also charged, that many pieces of land in the parish which were, and for many years past constantly had been used as meadow, had been, during such time, called by the name of *New Meadow*, to distinguish it from the *Ancient Meadows*; and that the tithe of hay from time to time cut on the said several pieces of *New Meadow* had been frequently delivered in kind, or compounded for by the occupiers thereof. The bill further charged, that the defendant occupied *Great Meadow* and *South Meadow*; that he insisted, that they were *Ancient Stint Meadows*, and covered by the *modus*, the contrary of which the plaintiff insisted was true. The bill also charged,

charged, that the defendant, some time in the year 1770, had destroyed the ancient boundary mark of a clofe of land, and then infifted, that it was part of his *ancient flint meadow*, and covered by the *moduses* : and the plaintiff infifted, that if the faid *moduses* were good in law, it ought to be afcertained what were the particular lands for the tithe of hay arifing on which the fame were payable, fo that it might be fettled out of what lands he was entitled to tithe hay in kind. The bill then further charged, that the tithes of hay arifing on thofe lands in the occupation of the defendant, which were not covered by any good *modus*, ought not by law to be fet out in fwarths, nor fet out at all, until the mowing was put into grafs cocks or pooks ; that it had been the immemorial custom of the parifh to fet out the tithes of hay, clover, and ever grafs, in grafs cocks or pooks, and not in fwarths ; that the faid mode of tithing was neceffary in the parifh, on account of the great inequality which the very irregular forms of the fields therein made in the length and breadth of the fwarths. The bill therefore prayed, that the tithes in kind of all hay, clover, and ever grafs, arifing on the lands occupied by the defendant, might be fet out in grafs cocks or pooks, and the right of the plaintiff and his fucceffors to fuch mode of tithing eftablifhed ; that an account might be taken of fuch hay, clover, and ever grafs in each year fince the year 1770, and of the value of the tithes thereof ; and that the defendant might be compelled to pay to the plaintiff what fhould appear to be due on fuch account,

QUICKER  
againft  
LANE.

but infifting, that if fuch *moduses* were good, it ought to be afcertained to what particular lands they applied ; that the tithe hay ought to be fet out in *grafs cocks*, and not in *fwarths*.

The defendant admitted, that the plaintiff was rector of the parifh, and entitled to the tithes of all titheable things arifing therein, fave and except, and fubject to the feveral ancient *moduses* hereafter-mentioned, and the tithes of grafs in grafs cocks. He faid, that he had, for feveral years paff, occupied two eftates in the parifh, the one called *Higher Southcott*, and the other *Lower Southcott* ; that every field thereto belonging was diftinguifhed by different names, and were of the feveral natures in his answer mentioned ; that part of the faid farms was arable land, except a fmall parcel of moor ground ; that other parts of the faid eftates confifted of, and had been deemed *ancient flint meadows*, as particularized in the answer ; that they had been constantly mowed ; but that no tithes in kind of the hay thereof had ever been paid ; that other parts of the faid eftates confifted of *Moor Ground*, containing the feveral quantities of lands, of about one hundred and ten acres, as named in the answer, and were all held by him in his own right : and he fet forth the quantity of arable land he had laid down yearly for clover, grafs feeds, or pature ; and faid, that he had given notice to the plaintiff to attend and fee the tithes fet out according to the ancient ufage of tithing in the parifh ; that he had refufed fo to do ; that he, the defendant, thereupon

The defendant denies, that the tithes of hay ought to be fet out in grafs cocks ; and fays, that he occupies *Higher Southcott* and *Lower Southcott* ;

that part of them is arable, part moor ground, and part ancient flint meadow ;

that he had fet out his tithes of hay, clover, and ever grafs, in fwarths ;



QUICKE  
against  
LANE.

that there was a  
modus of 3d. a-  
year, at *Easter*,  
in lieu of the  
tithe hay on the  
ancient *flint mea-*  
*dow*, and 1d. a-  
year for that of  
*Middle Week* ;  
that the *modus*  
had been receiv-  
ed by the plain-  
tiff's predeces-  
sors ;  
that he had ten-  
dered what was  
due.

The cause  
heard.

An account or-  
dered of the tithe  
hay not set out  
in swarths.

An issue direct-  
ed, to try,  
Whether the  
tithe hay ought  
to be set out in  
swarths.

A verdict, that  
it ought not to  
be set out in  
swarths.

thereupon took witnesses, and set out the tithes thereof ; and that the said tithes remained on the ground, and were not carried off by the plaintiff. The defendant then said, that all the inhabitants, owners, and occupiers of lands in the parish had immemorially paid to the rector, at *Easter* yearly, the ancient *modus*es or payments in the answer particularly mentioned ; and amongst others, threepence, in lieu of the tithe hay of the ancient *flint meadows* on the lands called *Higher Southcott* ; threepence for the tithe of hay of ancient *flint meadow* on the lands called *Lower Southcott* ; one penny for the tithe of another parcel of lands called *Middle Week* ; and the tithe in kind of corn on lands when sown with corn. The defendant then averred, that the *modus*es in his answer mentioned ought to have been accepted by the plaintiff, as they had been by his predecessors ; that in the year 1771 he had tendered to him the several sums due to him in respect thereof, and a satisfaction for all titheable matters arising on his said lands, but which he had refused to accept, insisting, that there were no such *modus*es.

The plaintiff replied ; the defendant rejoined ; and witnesses were examined on both sides ; and upon hearing counsel on both sides ; and reading the answer and bill ; and several proofs taken in the cause ;

THE COURT ordered the deputy remembrancer to take an account of what was due for the tithe of all hay, the tithes of which had not been set out in swarths.

THE COURT further ordered, as to the tithes of the hay that had been set out in swarths, that there should be a trial at law to try, " Whether, for the time whereof the memory of man " is not to the contrary, the tithe of hay on the lands occupied " by the defendant within the said parish, ought to be set out " in swarths or not ? " The defendant in equity to be plaintiff at law ; and that if on such trial the jurors should not find such custom of tithing hay as was alledged in the answer, or should find any *modus* or custom of tithing such hay other than or different from that alledged in the answer ; or if any other special matter should arise, the Judge to indorse the same upon the *posse* : the consideration of costs and all further directions to be reserved till after report and such trial had : the decree to be without prejudice as to the proceedings in other causes depending in the court by bill, in the case of *Arundell v. Quicke*.

The deputy remembrancer made his report, dated the nineteenth of *February* 1777.

A trial was accordingly had ; and the jury found, " That " the tithe hay arising, growing, and renewing, on the lands " occupied by the defendant, from the time whereof the memory " of

"of man is not to the contrary, had not been, nor had used  
 "and accustomed to be, nor of right ought to have been,  
 "nor still of right ought to be, set out in swarths."

QUICKZ  
 against  
 LANE.

On the twenty-first of *February* the cause came on upon the report and the *poslea*.

THE COURT ordered the report to be confirmed, and the defendant to pay nine pounds, ten shillings, reported due for the tithe of hay which had not been set out in swarths, with costs in respect thereof.

Tender for tithe  
 hay not set out  
 in swarths de-  
 creed.

THE COURT further ordered the deputy remembrancer to take an account of what was due for the tithes of such hay as had been set out in swarths, but that such account be taken *without prejudice*.

An account or-  
 dered for the  
 tithe of such hay  
 as had been set  
 out in swarths.

THE COURT further ordered the defendant to pay the plaintiff his costs at law and in this court to this time respecting the demand of tithe hay, whereof the tithe was improperly set out by the defendant in swarths; further directions to be reserved until after report.

Costs.

LE CLERE *against* JONES.

*Staffordshire, 29th April 1776.*

EASTER TERM  
 16. GEO. 3.

THE bill stated, that the *Bishop of Litchfield and Coventry*, being seised in right of his bishoprick of the rectory impropriate of *Gnosall*, in the county of *Stafford*, and all manner of tithes arising therein, by indenture, dated the twenty-fifth of *March 1762*, demised to *Mary Waldo* and others, "all and all manner of tithes and fifteenths of corn and grain, and all other tithes whatsoever issuing, &c. in or upon all that capital messuage or tenement called *Walton Grange*, and from all lands "and tenements thereto belonging for twenty-one years;" that the said lessees, by indenture dated the fourteenth of *July 1772*, demised the said tithes arising from *Walton Grange*, with the lands and tenements thereto belonging to the plaintiff; that divers parcels of *Walton Grange*, and of the lands thereto belonging, had ever since the date of the said lease been in the possession of the defendants as tenants; that they had had thereof divers quantities of corn, grain, hay, potatoes, turnips, colts, calves, lambs, sheep sheared, horses, cows and other neat cattle, and sheep depastured, and had from time to time set out their tithes of corn, but had refused either to set out or satisfy him for the other titheable matters, alledging that their said lands were discharged of all other tithes, or that the plaintiff was entitled only to some prescriptive payment in lieu thereof. The bill therefore prayed an account and payment thereof.

The impropria-  
 tor of the tithes  
 of the parish of  
*Gnosall*, in *Staffordshire*, is en-  
 titled to the fif-  
 teenth part of all  
 corn and grain,  
 and to the tenth  
 part of every other  
 titheable matter  
 arising on the  
 lands belonging  
 to *Walton Grange*  
 in kind.

The

LE CLÈRE  
against  
JONES.

The defendants admitted, that the *Bishop of Litchfield and Coventry* was impropriator of the tithes of corn and grain; that he had made such demise thereof to *the Walds*; and that *the Walds* had demised the same to the plaintiff; and they said, they occupied *Walton Grange* in four different farms as tenants, and had had thereon during their respective occupations the titheable matters mentioned in the bill; and insisted, that they or the tithingman for the liberty of *Walton Grange* had from time to time set out *the sixteenth part* of all corn and grain; and that the same was in lieu of all manner of tithes arising therefrom; that they and their predecessors, tenants and occupiers of the said farms, and all other occupiers and tenants of *Walton Grange*, had immemorially paid the said sixteenth part of corn and grain produced therefrom; that the same had been accepted accordingly in full satisfaction of all such tithes; that *Walton Grange* had formerly belonged to the monastery of *Bildwas*, in the county of *Salop*; that *Henry the Eighth*, in or about the thirty-seventh year of his reign, granted the said monastery and grange called *Walton Grange*, with sundry other granges and things, and all tithes, oblations, and hereditaments thereto belonging, to *Edward Gray Knight, Lord Powis*, and his heirs for ever, from whom the several landlords of them, the defendants, derived their title; that the abbot or prior and monks of the said monastery had enjoyed the same discharged of all such tithes, except the said sixteenth part of corn and grain, by virtue of some bull, canon, real composition, or prescription, or by some other legal ways and means, down to the time of their dissolution; and that by virtue of some statute the grantees of *Henry the Eighth* were entitled to hold the said lands freed and discharged of the payment of tithes, except as aforesaid; and that therefore they ought not to be compelled to account with the plaintiff for the same.

The plaintiff replied; the defendants rejoined; and witnesses were examined on their behalf only: and upon hearing counsel on both sides; and reading the several proofs taken in the cause;

THE COURT ordered the deputy remembrancer to take an account of what was due for the tithes demanded by the bill, with costs; and the deputy's report, dated the twenty-first of *February 1778*, was on the twenty-fifth of the same month confirmed with subsequent costs, and the defendants ordered to pay the plaintiff the several sums reported due for their tithes for ten years past.

SMYTHE, *Chief Baron.*  
EYRE, *Baron.*  
HOTHAM, *Baron.*  
PERRYN, *Baron.*

EAD



EASE *against* GOOCH.EASTER TERM  
16. GEO. 3.*Suffolk, 6th May 1776.*

THE bill stated, that the plaintiff, on the thirtieth of July 1772, was legally instituted and inducted into the vicarage of *Tannington*, otherwise *Tattington*, with *Brundisb*, and all the members and appurtenances thereof, in the county of *Suffolk*, annexed; that the vicars of the said vicarage were by endowment, prescription or otherwise, entitled to the tithes of hay, clover, cole seed, rape seed, and all small and mixt tithes arising therein, the tithes of corn and grain only excepted; that the defendant occupied a messuage and lands in *Brundisb*, and within the said vicarage, and had thereupon the titheable matters stated in the bill; the tithes of all which in kind, and also *Easter* offerings he had refused to pay, on a pretence that there were *modus*, as appeared by some ancient terriers, payable in lieu thereof; but that in truth there were no such *modus*; and that if any such had been inserted in any modern terriers, it was by the contrivance of the parishioners.

The vicar of *Tannington cum Brundisb*, in *Suffolk*, claims the tithes of hay and all other tithes, except corn and grain, in kind.

The defendant denied, that the vicar was entitled to the tithes of hay, clover, cole seed, and rape seed, and all small, mixt, and other tithes arising therein, otherwise than according to the immemorial customs of the said parish, set forth in the terriers of the said vicarage in the registry of the bishop of *Norwich*, and he stated the contents of eleven terriers in his answer; and insisted that the vicars had always collected their tithes by such terriers and the customs therein mentioned. He further said, that until the fifteenth of *November 1772*, he had occupied only a part of the messuage, and a piece of land in the church yard of the said parish; that he had given due notice to the plaintiff, that he would pay the tithes and offerings due on *Old Lammas Day 1773*, in the church porch of *Brundisb*; but that he did not attend to receive the same; and he insisted, that he was not liable to pay tithes in kind for the meadow land, hard land, hay, or clover hay; and, setting forth his titheable matters and things, averred that he had tendered the tithes thereof according to the customs in the said terriers, and had also offered to pay his *Easter offerings* on *Old Lammas Day*, twopence for himself, and twopence for his wife, which the plaintiff had refused to accept.

The defendant says, that he is not entitled to all the said tithes in kind, but only, as appears by eleven different terriers, to certain *modus* in lieu of dairy cows, heifers, calves, ghaist cows, cows casting their calves, cows brought in after *Easter*, bottom meadow, hard land meadow, lambs, fruit, and wood.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and the cause came on to be heard on fifteenth of *December 1775*; but upon hearing counsel, and reading the answer, the cause was by consent, and on the defendants paying the costs of the day, ordered to stand over that the plaintiff might amend his bill by striking thereout such parts as he should be advised, and amending the defendant's office

The plaintiff permitted to amend his bill and the defendant to state the *modus*.

copy;

EASE  
against  
GOOSE.

copy; the defendant be at liberty to put in a further answer, confined to a state of the *moduses* mentioned in the *terriers* set forth in the answer sworn; and it was agreed, that the depositions before taken should be read at the further hearing; and that no new commission should issue for examining any other witnesses in the cause. The plaintiff accordingly amended his bill, and the defendant filed a further answer.

The defendant  
sets up a *modus*  
of

6d. a milch cow,  
in lieu of her  
milk and calf;

3d. for a heifer  
and calf;

3d. for a ghaft  
cow;

3d. for a cow  
casting her calf;

4l. for a cow  
fed between *Eas-*  
*ter* and *Midsum-*  
*mer*;

4d. an acre for  
bottom mea-  
dow, in lieu of  
tithe hay;

2d. an acre for  
hard land mea-  
dow;

1d. for a colt;

1d. for a lamb;

2d. for hemp  
land;

2d. an orchard;

6d. for wood;

The defendant by his further answer insisted there then was; and from time whereof the memory of man was not to the contrary, had been, the following ancient and laudable customs in the said parish and the titheable places thereof. FIRST, That the inhabitants and parishioners of the said parish and each of them had always paid yearly and every year at *Lammias*, or as soon after as the same was demanded to and for the use of the vicar of the said parish for the time being, the sum of sixpence for every dairy cow had by him or them, and fed and depastured within the said parish or the titheable places thereof, which had more than one calf, as a *modus*, and in lieu of all tithes of milk, cheese, and calf arising and renewing from such cow. SECONDLY, The sum of threepence for every heifer and her calf had, fed, and depastured, &c. as a *modus*, in lieu of the tithe of milk, cheese, and calf thereof. THIRDLY, The sum of threepence for every ghaft cow had, fed, &c. as a *modus*, in lieu of the tithes of milk and cheese thereof. FOURTHLY, The sum of threepence for every cow that had cast her calf, as a *modus*, in lieu of the tithes of milk and cheese from such cow. FIFTHLY, The sum of fourpence for every cow bought in for the dairy after *Easter* and before *Midsummer*, as a *modus*, in lieu of the tithes of milk, calf, and cheese thereof. SIXTHLY, The sum of fourpence for every acre of bottom meadow occupied by him and them in the said parish, or the titheable places thereof, as a *modus*, in lieu of the tithes of grass and hay growing or arising thereon. SEVENTHLY, The sum of twopence for every acre of hard land meadow occupied, &c. as a *modus*, in lieu of the tithes of grass and hay growing or arising thereon. EIGHTHLY, The sum of one penny for the fall of every colt had by him, &c. as a *modus*, in lieu of the tithes of colts. NINTHLY, The sum of one penny for the fall of every lamb had by him, &c. as a *modus*, in lieu of the tithes of lamb. TENTHLY, The sum of twopence for hemp land occupied by him, &c. as a *modus*, in lieu and discharge of the tithes of hemp arising from such lands. ELEVENTHLY, The sum of twopence for every orchard occupied, &c. as a *modus*, in lieu and discharge of the tithes of fruit arising from such orchard. And TWELFTHLY, The sum of sixpence as a *modus*, in lieu and satisfaction of the tithes of all wood had by him and them in the said parish or titheable places thereof. And he insisted, that the said several payments had been immemorially

immemorially paid and accepted by the vicar of the said parish for the time being, his farmer, lessee, or tithingman; and also that twopence had been paid to, and received and accepted by the vicar of the said parish for the time being for every communicant.

EADE  
against  
GOOCH.

ad. a-head for  
Easter offerings.

The cause came on be heard on the sixth of *May* 1776; and upon hearing counsel on both sides; and reading, on the plaintiff's behalf, the depositions taken in the cause; an ancient terrier of the glebe lands, gardens, orchards, and houses belonging to the vicarage; another terrier of the glebe lands, gardens, orchards, and houses belonging to the said vicarage, dated the twenty-first of *January* 1635; the instruments of the plaintiff's institution and induction into the said vicarage; and on reading, on the behalf of the defendant, the depositions taken on his behalf; several terriers of all the glebe lands, pastures, gardens, orchards, tenths, and portions of tithes within the towns of *Tannington* and *Brundish*, beginning the tenth of *September* 1677, and ending in 1770; a notice given by the defendant and others to the plaintiff, dated the twentieth of *July* 1773; several receipts given by or on the behalf of *Mr. Alexander*, late vicar of the said parish for tithes to several persons therein named; and also an account of what the defendant admitted himself to be indebted to the plaintiff for herbage and tithes due at *Lammas* 1773;

The cause  
heard.

THE COURT ordered a trial at law upon the following issues:

Issues directed to  
try the *modus* as  
to

FIRST, "Whether there now is, and, from time whereof the memory of man is not to the contrary, hath been a certain ancient custom in the parish of *Tannington*, otherwise *Tattington* with *Brundish*, in the county of *Suffolk*, and the titheable places thereof, that the inhabitants and parishioners of the said parish, and each of them, had and have always paid, and ought to pay yearly and every year at *Lammas*, or as soon after as the same should be demanded, unto and to the use of the vicar of the said parish for the time being, the sum of sixpence for every dairy cow had by him or them, and fed and depastured within the said parish, or the titheable places thereof, which had more than one calf, as a *modus*, and in lieu of all tithes of milk, cheese, and calf arising and renewing from such cow, and that the same had been immemorially received and accepted accordingly, by the vicar of the said parish for the time being, or his lessee, farmer, or tithingman."

6d. a dairy cow,  
that had had  
more than one  
calf.

SECONDLY, "The like issue to try the *modus* of threepence for every heifer and her calf, in lieu of the tithes of milk and cheese thereof."

3d. a heifer and  
her calf;

VOL. III.

N n

THIRDLY,



- HAND**  
**against**  
**Gooch.**
- 3d. a ghaft cow ;  
3d. a cow cast-  
ing her calf ;
- 3d. a cow fed  
after *Easter* ;
- 4d. an acre for  
bottommeadow ;
- 2d. for hard land ;
- 1d. a colt ;
- 1d. a lamb ;
- 2d. an orchard ;
- 6d. for wood ;
- THIRDLY, " The like for every ghaft cow threepence, as a *modus*, in lieu of the tithes of milk and cheefe thereof.
- FOURTHLY, " The like for every cow that casteth her calf, threepence, as a *modus* in lieu of the tithes of milk and cheefe from such cow."
- FIFTHLY, " The like for every cow bought in for the dairy after *Easter* and before *Midsummer*, fourpence, as a *modus* in lieu of the tithes of milk, calf, and cheefe thereof."
- SIXTHLY, " The like issue to try the *modus* of fourpence for every acre of *Bottom Meadow* occupied by him and them in the said parish, or the titheable places thereof, as a *modus*, and in lieu of the tithes of grafs and hay growing or arising thereon."
- SEVENTHLY, " The like to try the *modus* of twopence for every acre of hard land meadow occupied, &c. as a *modus*, and in lieu of the tithes of grafs and hay growing or arising thereon."
- EIGHTHLY, " The like to try the *modus* of one penny for the fall of every colt had by him, &c. as a *modus*, and in lieu of the tithe of colts."
- NINTHLY, " The like to try the *modus* of one penny for the fall of every lamb had by him, &c. as a *modus*, and in lieu of the tithes of lambs."
- TENTHLY, " The like to try the *modus* of twopence for every orchard occupied, &c. as a *modus*, and in lieu and discharge of the tithes of fruit arising from such orchard."
- LASTLY, " The like to try the *modus* of fixpence, as a *modus*, and in lieu and satisfaction of tithes of all wood had by him and them in the said parish, or the titheable places thereof."

The defendant in equity to be plaintiff at law, to be tried by a special jury, and the judge who shall try the said issues to indorse the *posse* as to any special matter, &c.

The tithes of other matters decreed in kind.

THE COURT further ordered the defendant to account with the plaintiff for the several other species of tithes demanded by his bill.

Verdict found in favour of the *moduses* for a dairy cow that had had more than one calf ; for heifer and calf ; for ghaft cow ; for cow casting calf ; for cows fed after *Easter* ; for colts ; lambs ; orchards ; and wood ; but against the *moduses* for broad bottom and hard land meadows.

issues ;

issues; and as to the sixth and seventh issues the jury found a verdict for the plaintiff in equity.

But as to the said two last mentioned issues, *Sir William Blackstone*, in pursuance of the power given him by the said decree, indorsed *THE POSTEA* in the words following, to wit: "I do hereby certify, that on the trial of the within cause, it appeared in evidence, and was so found by the jury, that notwithstanding there are no such *modus*es as are mentioned in the sixth and seventh issues, there is a *modus* of fourpence for every acre of *Bottom Meadow*, when the same shall be mowed in the parish of *Tannington*, otherwise *Tattington* with *Brundish*, and also a *modus* of twopence for every acre of *Hard Land Meadow* in the same parish, when such *Hard Land Meadow* shall be mowed."

EADE  
against  
GOOCH.

But the judge certified that a *modus* of 4d. an acre for *Broad Bottom Meadow*, and 2d. for *Hard Land Meadow*, when mowed, had been proved.

THE COURT, on the third of *February* 1777, after hearing counsel on both sides; and reading the decree, *postea*, certificate, the depositions of several witnesses, a notice to the plaintiff, dated the twenty-second of *July* 1773, an account intitled "*J. W. Gooch*, to the *Rev. Mr. Eade*, debtor, for herbage and tithes due *Lanmas* 1773, the particulars whereof amount to "one pound, and twopence," ordered the defendant to account for the said several *modus*es mentioned in the first, second, third, fourth, fifth, eighth, ninth, tenth, and last issues, and also for the *modus*es mentioned in the certificate of *Sir William Blackstone*; the deputy remembrancer, as well in taking the said account, as the account directed by the former decree, to distinguish how much was due to the plaintiff on the twelfth day of *August* 1773; costs and further directions reserved until after report.

The Court therefore directed the defendant to account according to the said *modus*es.

SMYTHE, *Chief Baron*.  
EYRE, *Baron*.  
HOTHAM, *Baron*.  
PERRY, *Baron*.

### FROOME against RAWLINS.

*Dorsetshire*, 10th June 1776.

TRIN. TERM,  
16 Geo. 3.

THE rector of *Puncknole*, with the church of *Bexington*, in the county of *Dorset* annexed, claimed all the tithes which had arisen on *Bexington Farm*, since *Lady Day* 1774.

The rector of *Puncknole* with *Bexington*, in *Dorsetshire* annexed, in kind.

claims the tithes of *Bexington Farm*,

The defendant admitted, that the plaintiff was rector of the parish of *Puncknole*, with the church or scite of the church of

The defendant says, that *Puncknole* and *Bexington*

*ton* were originally distinct parishes; that they were united in the year 1451; that the churches went to decay; that an agreement took place, that the owner of *Bexington Farm*, which formerly included the whole parish, should build an additional aisle to *Puncknole Church*, and keep the same in repair, and pay the rector of *Puncknole* 30l. a-year; and that in consideration thereof, the owner of *Bexington Farm* should be exempted by such *real composition* from the tithes thereof, and that the said aisle had been kept in repair, and the 30l. a-year paid accordingly.

FROOME  
against  
RAWLINS.

*Bexington*, or *West Bexington* thereto annexed, and entitled to the tithes demanded by the bill except as after-mentioned. He also admitted, that he had, ever since the plaintiffs induction, in the month of *May 1770*, occupied *Bexington* or *West Bexington Farm* in the said parish of the yearly value of three hundred pounds; and that he had had during that time divers titheable matters thereon, the tithes of which he had taken and retained to his own use. He further said, that not only the preceding rectors but the present plaintiff had received to *Lady Day 1774*, old stile, the yearly sum of thirty pounds, as a composition, in lieu of the tithes of the said farm; that the said sum had, from very ancient time, probably ever since the year 1451, been yearly paid, as part of a certain ancient composition, in lieu of all manner of tithes due from *Bexington Farm*; that the said place was now a farm, but had been in old times either the whole or part of a parish separate and distinct from *Puncknole*; that it had a parish church of its own; that it was united to *Puncknole* in or about the year 1451; that during that year the fruits and emoluments of the said churches had, on account of the invasion of enemies and other fortuitous circumstances, to decreased as to be insufficient for the sustenance of the rectors; and that both the said churches became at that time vacant, and the parishioners thereby deprived of any ministration of sacramental rites; that although by the instrument of union of the said two churches and parishes remaining among the records of the *Bishop of Salisbury*, the tithes, oblations, and all other rights of *Bexington* aforesaid, were made payable to the rector of *Puncknole*, yet that the said rector was thereby obliged once in every week in *THE CHANCEL* of the said then *Bexington Church*, to do certain parochial duties, and also on *Saint Giles's Day*, in honour of whom the said church was dedicated, yearly, for ever; that the said rector for the time being was thereby also directed and obliged to repair and sustain the chancel of *Bexington*, and if there should be a necessity to build it *de novo* at his own proper costs and expences, and also bear and pay all other charges whatsoever, that were incumbent on *Bexington* before the said union; that the chancel of *Bexington* had long been suffered to fall into and was in total decay; that there had not been any ministration of sacraments or other divine service or worship there for a long time past; that an additional aisle had been added to the said parish church of *Puncknole*; that the said aisle was added thereto at the costs and expence of the former owners of *Bexington Farm*, for that the same always had been and still was repaired and upheld by the owners of the said farm, who before the said union could have no such incumbrance on them in the parish of *Puncknole*; that it was, for the use and ease, as well of the rectors, as of the said united parishes, and of the owners of *Bexington Farm*, on or about the year 1451, or at some



FROOME  
against  
RAWLINS.

some other time before the reign of *Queen Elizabeth*, settled in due form by way of *real composition*, to take place for ever between the said rectors and the said owners of *Bexington Farm*, that they the said owners, their farmers, and tenants should for ever after repair and uphold the church of *Bexington*, or some fit place of worship within the said united rectories, for the use of the inhabitants of the said parish of *Bexington*, and also to pay yearly at *Midsummer* the sum of thirty pounds, and should in consideration thereof be exempt from tithes as aforesaid; that the payment of the said thirty pounds at *Midsummer* was altered, as to the time of payment, by the late rector having received a quarter part thereof to *Lady Day*; that in pursuance of this composition, the owners of *Bexington Farm* had ever since repaired and upheld the said parish church of *Bexington*, or some fit place of worship within the said united rectories, for the inhabitants of the said united rectories, and particularly that in the year 1650, the owners of the said estate did build or rebuild a new aisle to the parish church of *Puncknole*, for the use of the inhabitants of the said parish of *Bexington*, which said aisle the owners of the said estate had ever since kept in repair at their own expence, and the inhabitants of the said parish of *Bexington* had ever since used it as their own proper place of worship; that in pursuance of the said composition the owners of the said estate had ever since yearly paid to the rector of the said united parishes for the time being the sum of thirty-pounds, subject to no other variation than what had arisen from a deduction of a due proportion of *the land tax*, according to the provision of the statute enacted yearly for raising such tax. The defendant further said that he believed there never was a time when the owners of the said estate paid tithes in kind, and to the value, to the rector of the said united parishes, but that there always had been such composition between the said rector and the owner of the said estate for the time being, which said composition was the more easily effected, because the estate in question did anciently belong either to *the Abbey of Bindon* or to *the Abbey of Abbotsbury*, and the whole advowson of the rectory of *Bexington*, and that after the union of the two rectories of *Puncknole* and *Bexington*, the alternate right of presentation to, or half the advowson of the said united rectories did also belong to the *Abbot of Abbotsbury*. He admitted, that the plaintiff had given him notice that he would not accept the said payment after *Lady Day* 1774, and did require him after that time to set out all the tithes of the said farm; and that he had carried away the same without setting out the tithes thereof. He also admitted, that the plaintiff had applied to him to account; but that, relying on the said ancient *real composition*, he had kept no account of the produce of the farm; but he submitted to be examined upon interrogatories as to the value thereof, in case the plain-

FACOME  
against  
RAWLINS.

The cause  
heard.

tiff should appear to be entitled to such tithes, as claimed by the bill.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel; reading the depositions; an order of court; an extract from a survey remaining in THE FIRST FRUITS OFFICE, and taken in pursuance of an act of parliament made the twenty-sixth year of *Henry the Eighth*; and the depositions of witnesses on the defendant's part;

Tithes in kind  
decreed with  
costs.

THE COURT ordered the depury remembrancer to take an account of the tithes in kind demanded by the bill, and the defendant to pay what should appear due thereon, with costs.

SMYTHE, *Chief Baron.*  
EYRE, *Baron.*  
HOTHAM, *Baron.*  
PERRYN, *Baron.*

TRIN. TERM,  
16. Geo. 3.

FOWELL against FILMER, Bart.

*Kent, 5th July 1776.*

The rector of  
*Chartham*, in  
*Kent*, is entitled  
to the tithes of  
the *Seven Acre*  
*Wood*, part of  
*Nicholl's Farm*,  
in kind.

THE rector of *Chartham*, in the county of *Kent*, claimed the tithes in kind of hay, wool, corn, wood, underwood, furze, heath, broom, and other titheable matters yearly arising therein, particularly of the underwood which the defendant had cut in *Seven Acre Wood*, as owner thereof in the year 1768.

The defendant admitted, that he was owner of *Seven Acre Wood*; that the said wood was parcel of *Nicholl's Farm*; that the said farm had been purchased by his ancestors in the fifteenth of *Queen Elizabeth*; that it was situated in the several parishes of *Chartham*, *Boughton under the Blean*, and *Chilham*; that he and his ancestors had, ever since the said purchase, duly paid or compounded for the tithes of *Nicholl's Farm*, except with respect to *Seven Acre Wood*, and *Clayforshall Hill Wood*; and he denied, that any part of the said woods stood or grew within the parish of *Chartham*, or in the precincts or titheable places thereof.

THE COURT directed an issue to try, "Whether the wood called *the Seven Acres*, in the pleadings of this cause mentioned, lies within the parish of *Chartham*, in the county of *Kent*."

The

The issue was accordingly tried, and the jury found that the said wood called *Seven Acres* was within the parish of *Chartbam*.

FOWELL  
against  
FILMER.

THE COURT therefore, on the twentieth of *November* 1777, declared the plaintiff's right to the tithes in question to be established, and ordered the deputy remembrancer to take an account of what was due to him for the tithes demanded by the bill, with costs at law, but not in equity.

---



REPORT OF THE COMMISSIONER OF THE GENERAL LAND OFFICE

The following is a list of the lands which have been surveyed and patented by the General Land Office since the 1st of January, 1880, and which have been included in the report of the Commissioner of the General Land Office for the year 1880.

The following is a list of the lands which have been surveyed and patented by the General Land Office since the 1st of January, 1880, and which have been included in the report of the Commissioner of the General Land Office for the year 1880.

The following is a list of the lands which have been surveyed and patented by the General Land Office since the 1st of January, 1880, and which have been included in the report of the Commissioner of the General Land Office for the year 1880.

The following is a list of the lands which have been surveyed and patented by the General Land Office since the 1st of January, 1880, and which have been included in the report of the Commissioner of the General Land Office for the year 1880.

The following is a list of the lands which have been surveyed and patented by the General Land Office since the 1st of January, 1880, and which have been included in the report of the Commissioner of the General Land Office for the year 1880.

The following is a list of the lands which have been surveyed and patented by the General Land Office since the 1st of January, 1880, and which have been included in the report of the Commissioner of the General Land Office for the year 1880.

The following is a list of the lands which have been surveyed and patented by the General Land Office since the 1st of January, 1880, and which have been included in the report of the Commissioner of the General Land Office for the year 1880.

The following is a list of the lands which have been surveyed and patented by the General Land Office since the 1st of January, 1880, and which have been included in the report of the Commissioner of the General Land Office for the year 1880.

The following is a list of the lands which have been surveyed and patented by the General Land Office since the 1st of January, 1880, and which have been included in the report of the Commissioner of the General Land Office for the year 1880.

A  
T A B L E  
OF THE  
C O N T E N T S  
OF  
THE THIRD VOLUME.

---

A.

A B E R W H E E L E R.

**T**HE tithes of the township of *Aberwheeler*, in the parish of *Bodfarry*, in *Denbighshire*, are due to the *Dean of Saint Asaph*, as the impropriator thereof, *Lloyd v. Butcher*, 160

A F T E R M A T H.

1. Tithes are due for the aftermath of hay, although full tithes were paid for the first crop in the same year, *Hill v. Branfon*, 20
2. A custom that all out-dwellers shall pay fourpence an acre, in lieu of the tithes of after-grass, but that to inhabitants after-grass shall be tithe free, is bad, *Tutbill v. Day*, 85
3. Tithes are due for the aftermath of clover, *Horton v. Goddard*, 149

A G I S T M E N T.

1. A custom that the tithes of agistment are only payable by strangers who rent land in the parish, and not by the inhabitants thereof, is bad, *Hill v. Branfon*, 19
2. If, after sheep are sheared at the usual shearing day, they are depastured and sold before the next shearing day, agist-

ment tithe shall be paid for such depasturing of them, *Henning v. Willis*, 31

3. Agistment tithes are due for young wheys, and for coach horses occasionally used for purposes of profit, as in drawing coals, bricks, wood, manure, &c. *Thorpe v. Bendlowes*, 40
4. Agistment tithe is due for brood mares taken in to feed at so much a week, *Hugill v. Coates*, 73
5. A custom to pay sixpence an acre for grazing ground, when fed with barren cattle, is good, *Tutbill v. Day*, 85
6. Agistment tithe is payable for horses kept for a post-chaise, *Willis v. Harvey*, 199
7. Agistment tithe is due for sheep from the time they are sheared until they are sold, *Willis v. Harvey*, 199
8. If sheep belonging to a *tack shepherd* feed his sheep on a *dowm* in an adjoining parish, but shears them in the parish in which his cottage is situated, agistment tithe shall be paid to the parson of the parish in which they were fed, *Wills v. Page*, 299
9. A custom to pay two shillings an acre, or four shillings a-head, for the tithes of depasturing barren cattle, is good, *Goodfellow v. Roberts*, 301
10. A cus-

## A TABLE OF CONTENTS.

10. A custom that *inhabitants* shall pay two shillings an acre for meadow and pasture, in lieu of tithes hay and agistment, excepting of such lands as are summer eaten, and not mowed; and that an *out-dweller* having lands in the parish shall pay ten shillings an acre whether the lands are eaten or mowed, is good, *Shaw v. Robinson*, 327
11. A custom to pay fourpence a-head for beasts fed at grass and sold off fat, at the *Easter* following the sale thereof, is good, *Willis v. Fotheringham*, 330
12. Agistment tithes are due for sheep depastured after they are sheared and sold off before the next shearing day, *Willis v. Fotheringham*, 330
13. A custom that every occupier of land who keeps a cow, except it be a milch cow, shall pay one penny a-year, in lieu of the agistment tithes of all barren and unprofitable cattle, is bad, *Townley v. Tomlinson*, 341
14. Agistment tithe is payable for bullocks, though fattened with hay that has before paid tithe in the same year, *Penfold v. Bailett*, 353
15. Agistment tithes are payable, although the lands on which the cattle are fed and depastured have before paid tithes the same year, *Hicks v. Tristram*, 364
16. Agistment tithe is not payable for sheep fed in one parish on a large common in right of lands lying in another parish, such sheep being only fed on the common in the day time, and folded every night in the parish where the lands lie in right of which they are so fed, *Ellis v. Fermor*, 382
17. A custom to pay threepence a-head for sheep agisted between *Candlemas Day* and *shearing day*, and a fleece for every score brought in after the second of *February*, is bad, *Bateman v. Astroppe*, 463
18. Agistment tithes are payable for sheep depastured from shearing-day until they are sold off, *Bateman v. Astroppe*, 463
19. A custom to pay fourpence an acre, in lieu of the agistment tithe of barren cattle above a year old, if fed one month in the parish, is good, *Bateman v. Astroppe*, 463

### AISHMORE.

The rector of *Aishmore*, in *Dorsetshire*, is entitled to the great and small tithes of the parish in kind, *Barber v. Eliot*, 178

### ALDGATE.

1. The rector of the parish of *Saint Bosolph without Aldgate*, in the county of *Middlesex*, is entitled to twenty shillings a year, in lieu of the tithes of certain houses in *East Smithfield*, the site of which was formerly parcel of the possessions of the monastery of *Grace*, *Kynaston v. Hatterley*, 9
2. There are certain other houses situated in *King Harry Yard*, in the said parish, which pay *moduses* in lieu of tithes in kind, *Umsfreville v. Topping*, 12
3. And *quare*, If there are not *moduses* in lieu of the tithes of certain houses in *Hooker's Rents*, 12
4. There are *moduses* of thirteen shillings and fourpence and fifteen shillings payable to the rector of *Aldgate*, in lieu of tithes of certain houses in *the Minories* and in *the High Street*, *Kynaston v. Brecknock*, 12
5. *The Catherine Wheel Brewhouse*, near *the Hermitage*, in *Lower East Smithfield*, in the county of *Middlesex*, pays three pounds a-year to the rector of *Saint Bosolph without Aldgate*, as a prescriptive payment in lieu of the tithes of the said premises, *Kynaston v. Hawley*, 135
6. The rector of *Aldgate* is entitled to twenty shillings a-year for the tithes of five houses in *Saint Catherine's Lane*, on *Little Tower Hill*, *Kynaston v. Piracy*, 469

### ANSTON.

1. The great and small tithes of the lands called *Deep Garr's Farm*, *Stubbing's Farm*, and *the Horse Course*, in the parish of *South Anston*, in *Yorkshire*, belong to the prebendary of *Laughton in the Minster*, as parcel of the possessions of the cathedral of *Saint Peter*, in *York*, *Rogers v. Parry*, 295
2. *Quare*, Whether the prebendary is entitled to the tithes of *the Plantation*, in *Hawthorn*



## A TABLE OF CONTENTS.

*Haydes, the Pickle Yards, the Spring Meadow, the Cow Closes, the Lockley Loam Close, and the Crofts Head Close, in kind, or only to fixpenny moduses in lieu thereof, Rogers v. Twibell,* 472

3. *Quære*, Whether he is entitled to the tithes of *Cotterell Woods* in kind, or only to a *modus* of two shillings a-year, *Rogers v. Champion,* 475

### APPLEDORE.

The rector of *Appledore*, in *Kent*, is entitled to the tithes of corn and grain in kind, but he is not entitled to the tithe of hay, *Hulse v. Munk,* 211

### APPLETON FIELD.

The lands called *Appleton Field*, in the parish of *Little Tew*, in *Essex*, is liable to the payment of tithes, *Williams v. Clarke,* 24

### ASHINGTON.

The rector of *Ashtington cum Bunclon*, in *Suffex*, is entitled to the great and small tithes of *Bunclon* in kind, although it lies in the *Wealds* of the county, *Penfold v. Bartley,* 351

### ASHTON UNDER LINE.

1. The rector of *Ashton under Line*, in *Lancashire*, is entitled to the great and small tithes of the parish in kind, *Booth v. Saxon,* 177
2. The rector of *Ashton under Line* is only entitled to a *modus* of one penny a-year at *Easter*, in lieu of the tithe hay on the lands called *the Wica Park*; and the same for the lands called *Dennis's Tenement*; to only a *garden tenny*, payable at *Easter* throughout the parish, in lieu of the tithes of garden stuff; to fourpence a milch cow, in lieu of tithe milk; and to one penny a calf, in lieu of the tithe thereof, *Booth v. Wright,* 288
3. And *quære*, If there are not special payments in lieu of *Easter offerings*, *Booth v. Wright,* 289

### AURE.

The vicar of *Aure*, in *Gloucestershire*, is entitled to the small tithes of the whole

parish, excepting garden stuff, for which there is a *modus* of one penny a-year, *Serjeant v. Adeane,* 257

### B.

### BALDON.

The history of the parish of *Baldon*, in *Oxfordshire*; its extent stated; its several townships described; and the question whether *Little Baldon* is part thereof or a distinct parish, and to whom the tithes thereof belong, agitated, but not determined, the plaintiff's original bill, and the defendant's cross bill, being both dismissed, *Tateman v. Cox,* 315

### BARHAM WOOD.

By the custom of the manor, *Barham Wood*, otherwise *Bersham Park*, is only to be stocked with cows, breeding cattle, dry cattle of the female kind, geldings, and brood mares, but not with sheep or any other cattle whatever, *Clarke v. Roads,* 488

### BARLEY.

*See* CORN.

### BARTON.

*See* SAINT PAUL—SAINT LAWRENCE.

### BAYARD'S GREEN.

*See* STOKELYNE.

### BEDMINSTER.

The vicar of *Bedminster*, in *Somersetshire*, is entitled to the tithes of the parish in kind, *Hill v. Branfon,* 18

### BELTON.

The vicar of *Belton*, in *Leicestershire*, is not entitled to the tithes arising on *Mervial Grange*, the said grange being tithe free, as having been formerly parcel of the possessions of the monastery of *Grave Dicu*; nor to the tithes of *the Ten Acres* in *the Open Fields* of *Belton*; but

## A TABLE OF CONTENTS.

but he is entitled to the tithes of  
*the Three Clofes* in kind, *Hastings v.*  
*Toon*, 455

### BERKSWELL.

The rector of *Berkswell*, in *Warwickshire*, is not entitled to any tithes in kind for *the Park Lands*, but enjoys a piece of meadow adjoining to the church-yard in lieu thereof: and *quærs*, If there are not certain *modus*es in lieu of the tithes of hay, wool, lambs, milk, colts, foals, calves, and poultry, *Taylor v. Eardley*, 231

### BEXINGTON.

*See PUNCKNOLE.*

### BIDDENDEN.

The manner in which the corn tithes of *Biddenden*, in *Kent*, are to be set out, *Maiber v. Holmwood*, 119

### BISHOP'S SUTTON.

*See SUTTON.*

### BLACKLAND.

The rector of *Blackland*, in *Wiltshire*, is entitled to the tithes of the parish in kind, *Smith v. Maundrel*, 332

### BLETCHINGTON.

1. The rector of *Bletchington*, in *Oxfordshire*, is entitled to the tithes of corn, grain, and hay in kind; to fourpence a-year in lieu of the other tithes of the lands called *Ricotti's Slade*; and to the tithes of the grounds called *Flatt Bean*, *the Slip*, *Chickwell Mead*, *Three Men's Mowth*, *Rushey Piece*, *Prickett's Ground*, *Sainsfoin Ground*, *the Horse Ground*, *the Ham*, and *the Mill*, in kind; for the piece of land called *the Parson's Piece*, which was added to *the Glebe Lands*, was not in lieu of the tithe of those grounds, *Brown v. Butler*, 1
2. He is also entitled to the tithes of the lands called *the Three Southbys*, *Lince Coppice*, and *Grass Mead*, in kind; but he is only entitled to a *modus* of thirteen shillings and fourpence in lieu of the tithes of the *Two Mill Meads*, and to eight shillings a-year in lieu of

*Knowle's Mead* and *Skein's Clofe*, part of *Stutfield Farm*, *Brown v. Annesley*, 98

### BLISLAND.

1. The rector of *Blisland*, in *Cornwall*, is entitled to the tithes of the parish in kind, and particularly to the tithes of the messuage or tenement called *Pengelly*, for which a *modus* of four shillings and fourpence a-year was pretended, *Hicks v. Triefle*, 363
2. But he is not entitled to any tithes of the mulcture of *Queen's Mill*, because it is an ancient mill, nor of *Strewland Mill*, because it is not used for purposes of profit, *Hicks v. Triefle*, 365

### BODFARRY.

The impropiator of the tithes of *Bodfarry*, in *Denbighshire*, is entitled to the tithes of the township of *Aberwheeler*, *Lloyd v. Butcher*, 160

### BODINGTON.

*Quære*. Whether the rector of *Bodington*, in *Northamptonshire*, is entitled to the tithes of that inclosure in *Lower Bodington*, which was formerly *common fields*, and inclosed, under an act of parliament, on the twentieth of April 1759, *Knowles v. Budd*, 95

### BOVINGDON.

1. The curate of the chapel of *Bovingdon*, in the parish of *Hemel Hempstead*, in *Hertfordshire*, is entitled to an annuity of ten pounds a-year, *Stirling v. Burrough*, 75
2. But the vicar of *Hemel Hempstead*, and not the curate of *Bovingdon*, is entitled to the small tithes of the chapelry, *Price v. Platt*, 87 *notis*
3. But if the vicar appoint a curate, he is entitled to the tithes, *Stirling v. King*, 89

### BREANE.

The rector of *Breane*, in *Somersetshire*, is entitled to the tithes of *Brean Down Farm* in kind, *Bowles v. Comer*, 519

BRIG-

## A TABLE OF CONTENTS.

### BRIGSLEY.

The rector of *Brigsley*, in *Lincolnshire*, is only entitled to ninepence an acre from the landowners who reside in the parish, and to tenpence an acre from the landholders who do not reside in the parish, in lieu of all tithes, both great and small, arising therein, *Pennel v. Odling*,  
444

### BROMSGROVE.

The vicar of *Bromsgrove*, with the chapel of *King's Norton*, in *Worcestershire*, annexed, is entitled to *modus* in lieu of several titheable matters; but he is only entitled to one penny a cow, on *Lammas Day*, from the owners of lands in *King's Norton*, in lieu of the tithe milk and depasturing of such cows, *Timmins v. Waugh*,  
90

### BROUGHTON.

*Quære*, Whether there is not a *modus* of twenty-two pounds a-year payable to the rector of *Broughton*, in *Lincolnshire*, in lieu of the tithes arising in the hamlets of *Manby* and *Gogriell*, in the said parish, *Carter v. Anderson*,  
329

### BULMER.

The customary mode of tithing wheat in the parish of *Bulmer*, in *Essex*, is, for the farmer to throw out with a fork every tenth sheaf at the time he loads the nine parts to carry them home, *Andrew v. Eaton*,  
407

### BURIAN.

The dean of the deanery of *Burian*, in *Cornwall*, is entitled to the great tithes of the parishes of *Saint Levan* and *Saint Sennen* in kind; and to certain *modus* in lieu of small tithes, except of bullocks and hemp, *Boscawen v. Roberts*,  
174

### BURNHAM.

1. The *glebe lands* belonging to the united parishes of *Burnham Saint Mary*, otherwise *Burnham Westgate* and *Ulp*, in *Norfolk*, separated from the lands belonging to *the Hall Farm*, *Abbot v. Wilkinson*,  
492

2. The rector of the above united parishes is entitled to the great and small tithes arising therein in kind, *Abbot v. Wilkinson*,  
495

### BURREINGTON.

The vicar of *Burrington*, in *Devonshire*, is entitled to the tithes of wood felled in *Narracot Wood*, and in the *bedgerows* and *coppices* of the inclosed grounds in the parish, from the owner of the soil, though he has sold the fall, *Hall v. Buck*,  
23

### BUSHEY.

The manner in which the rector of *Bushey*, in *Hertfordshire*, is entitled to his tithes, *Ibbetson v. Burt*,  
278

## C.

### CALVES.

1. A custom that the farmer is to *make even* the tithe of calves at *Easter* for as many as had fallen between *Easter* and *Easter*, according to the *example* stated in the case, disallowed, *Serjeant v. Adeane*,  
260
2. A custom to pay thirteen shillings and fourpence on *All Saints Day* for every tithe calf sold before that day; that if the breeder has only four calves in the year, no tithe calf is to be paid; that if he has five, he is to pay half a calf; if six, a whole calf; if fifteen, a calf and a half; if sixteen, two calves; if more than sixteen, every tenth calf; and that if the breeder keep his calves until *All Saints Day*, he shall pay the tithes of such calves in kind, disallowed, *Snowden v. Shoton*,  
369

### CATTISTOCK.

1. The rector of *Cattistock*, in *Dorsetshire*, is only entitled to a *modus* of one shilling and twopence a year from the occupier of lands in the out-tithing of the parish, in lieu of the tithes of milk, cows,  
cows,



## A TABLE OF CONTENTS.

- cows, and calves, *Churehill v. Cabell*, 108  
 2. The lands, called *Chentinale Farm*, lie in the out tithing of *Cattistock*, 111
- CHENTINARLE FARM.  
 See CATTISTOCK—FROME VANCHURCH.
- CHEESEBURN GRANGE.  
 See STANFORDHAM.

### CATTLE.

1. Tithes are payable for depasturing young wheys, *Thorpe v. Bendlowes*, 38
2. A custom to pay one shilling a year for every fat bullock, in lieu of the tithes of all barren cattle, is bad, *Byscawen v. Roberts*, 175
3. A custom to pay fourpence a head for beasts fed at grafs, and sold off fat, the payment to be made yearly on the *Easter* following the sale, is good, *Willis v. Fotheringham*, 330
4. A custom to pay tithes in kind for the depasturing of barren cattle under a year old, and fourpence an acre if above a year old, and fed for one month in the parish, is good, *Bateman v. Aistroppe*, 462

### CATWORTH.

The rector of *Great Catworth*, in the county of *Huntingdon*, is entitled to the great and small tithes of that part of the hamlet of *Little Catworth* which is included in the boundaries and perambulations of the parish, and not the prebendary of *Stow Longa*, *Maddock v. Day*, 416

### CAULDWELL.

The village of *Cauldwell*, in *Derbyshire*, though in many respects distinct from and independent of the parish of *Stapenhill*, within which it lies, is not exonerated from the payment of small tithes in kind, to the vicar of *Stapenhill*, by a *modus* of six pounds a year, *Lloyd v. Mortimer*, 516

### CHARTHAM.

The rector of *Chartbam*, in *Kent*, is entitled to the tithes of *the seven acres wood*, part of *Nicholl's Farm*, in kind, *Fowell v. Filmer*, 550

### CHESTER.

The history of the dissolved deanery of *Chester*, otherwise called *Chester la Street*, in the county of *Durham*, *Thornston v. Lumley*, 44

### CHILCOMPTON.

*Quære*. Whether the vicar of *Chilcompton*, in *Somersetshire*, is entitled to the tithes of hay, in kind, or only to a payment of sixpence in the pound, in lieu of tithe hay, and all other vicarial tithes, *Tucker v. Moore*, 349

### CHINDLEY.

The great tithes of the village of *Chindley*, otherwise called *Mai-fon Field*, in *Derbyshire*, are due to the rector of *Glossop Dale*, in the said county,

### CHINGFORD.

The rector of *Chingford*, in *Essex*, is entitled to the great and small tithes of the parish, in kind, *Torriano v. Legge*, 61

### CHIPPENHAM.

The vicar of *Chippenham*, in *Cambridgeshire*, is entitled to the small tithes of the *demise lands* of the manor of *Chippenham*, in kind, *Tookie v. Cornell*, 375

### CHURCHDOWN.

The dean and chapter of *Bristol Cathedral*, as impropiators of the rectory of *Churchdown*, together with *Huckscot*, in *Gloucestershire*, are entitled to the tithe of milk in the parish of *Churchdown*, in kind, *Allen v. Herbert*, 406

### CISTERTIANS.

1. The monastery of *By'd*. in *Shropshire*, was one of the greater monasteries, and the monks of it of the *Cistercian order*, but *Harnage Grange*, which was formerly parcel of the possessions of this

## A TABLE OF CONTENTS.

this monastery, is not tithe free, *Adams v. Windsor*, 6

2. The abbey of *Stratford Langborne* was one of the greater abbeys, and of the *Cistercian order*; and of which the lands called *Ham Erish Farm*, in the parish of *West Ham*, in *Essex*, were parcel, but the said lands are not tithe free, *Peacock v. Greenbill*, 317
3. See also *Greenbill v. Peacock*, 320

### CLERKENWELL.

The curate of the perpetual curacy of *St. James, Clerkenwell*, is entitled to all tithes and profits arising from baptisms, marriages, churchings, burials, &c. in the united parishes of *St. James and St. John, Sellaon v. Parry*, 435

### CLOVER.

1. Clover seed is a small tithe, *Clarks v. St. pier*, 121
2. See also *Cattwright v. Bailey*, 146
3. See also *Howley v. Venabier*, 207. 415
4. See also *Garrard v. Schollar*, 455
5. The tithes of clover cut green, and given to horses used in the business of the farm, ordered to be paid, *Horton v. Gradard*, 149
6. Clover made into hay is titheable as a small tithe, *White v. Read*, 158
7. Clover is included under a *modus* for hay, *Taylor v. Beaumont*, 401

### COBHAM.

*Quart*, Whether there is not a *modus* of one shilling and fourpence a year, in lieu of the tithes of *Six Acre Mead*, *Four Acre Mead*, *Hatchcroft Brook*, and *Three Acre Brook*; and another *modus* of tenpence a year in lieu of the tithes of *Dry Mead*, in the parish of *Cobham*, in *Surrey*, *Abdy v. Cbitty*, 229

### COLSTON BASSETT.

The vicar of *Colston Bassett*, in *Nottinghamshire*, is entitled to seven shillings and tenpence a year from certain lands in the village of *Newland*, in the adjoining parish of *Kinalton*, *Neel v. Bargin*, 272

### COLTO

The rector of *Colton*, in *Staffordshire*, is not entitled to the small tithes of that part of *Boughey's Farm* which lies in the parish of *Colton*, but the whole tithes thereof, either in kind or by *modus*, belongs to the vicar of the adjoining parish of *Colwich*, *Lauder v. Spencer*, 509

### COLVERLEY.

The vicar of *Colverley*, in *Yorkshire*, is entitled to the tithes of potatoes, turnips, turnip seed, rape seed, lambs, wool, and other small tithes arising on the lands in the manor of *Tyersal*, in the said parish, *Berwick v. Nicbolls*, 243

### COLWICH.

The vicar of *Colwich*, in *Staffordshire*, is entitled to the whole tithes of *Boughey's Farm*, although the greater part of it lies in the adjoining parish of *Colton*, *Lauder v. Spencer*, 509

### COMPTON BISHOP.

The vicar of *Compton Bishop*, in *Somersetshire*, is only entitled to certain *moduses* in lieu of the tithes of milk, calves, lambs, pigs, colts grazing grounds, and after grass; but he is entitled to the tithes of apples and wool in kind, and to twopence a head for Easter offerings, *Tutbill v. Day*, 85

### CORN.

1. A *modus* to pay five shillings an acre for wheat, and two shillings and sixpence an acre for other grain, is bad, as being too rank, *Torrano v. Frost*, 62
2. A custom not to cut corn or other grain until it is quite ripe, and then to set it out in shocks, and tithe the same as it is cut down, without waiting until the whole field is reaped, seem good, *Mothor v. Holmwood*, 119
3. See also *Erskine v. Ruffe*, 240
4. A *modus* of two shillings an acre, in lieu of the tithes of all grain reaped from the *inclosa arable lands* of a parish, and one shilling and sixpence an acre for

## A TABLE OF CONTENTS.

- for the tithes of grain reaped on the common field arable lands therein, is too rank, *Gale v. Carpenter*, 173
5. A *modus* of four shillings an acre for wheat, and two shillings an acre for lent corn, payable on *St. Thomas's Day*, is rank, *Hulse v. Munk*, 213
6. A custom that the landholders shall set up the tithes of corn and grain in sheaves and hattocks; that in consideration of so doing, they shall only pay the tenth haddock, and nothing for odd hattocks under ten, in lieu of the tithe thereof; and that the corn and grain of each close, and of each different kind, shall be tithed distinctly, without counting out of one close into another, or out of one kind of corn and grain into another, is bad, *Townly v. Tomlinson*, 37. 311
7. A custom to bind up wheat in sheaves, and to place the sheaves in shocks, and to pitch nine sheaves into the cart, and set out the tenth sheaf, is good, *Brograve v. Mace*, 397
8. A custom to set out the tithes of barley and oats, when cut with the scythe, in swarths; to carry away nine parts, and leave the tenth part for the tithes, is good, *Brograve v. Mace*, 398
9. A custom that the farmer shall place the sheaves of barley or oats into shocks, for the preservation of the same, and when the weather is likely to be bad, or towards the end of the harvest, to throw them in heaps on the stubbles, until sufficient is collected to set out the tithe thereof, and then to carry away the nine parts, is good, *Brograve v. Mace*, 398
10. A custom to set out the tithes of corn and grain in shocks, and that if there be any odd shocks, to set them out in sheaves, is good, *Taylor v. Beaumen*, 401
11. A custom to set out the tithes of wheat by the sheaf, in such a manner that it may be compared with the nine parts, and seen that it is fairly done; and to take such a quantity at a time, as the number of men employed, and the circumstances of the weather will admit of, without doing any injury to the interests of the parson, is good, *Andrews v. Eaton*, 408
12. A custom to bind wheat into sheaves, and to place them into stiches or shocks of twelve sheaves each, and then to place a bough on every tenth shock, beginning at the gate through which the nine parts are to be carried, and to tithe the odd shocks, if any, in the like manner, by sheaves, is good, *Bishop of Exeter v. Skinner*, 486
13. A custom to bind barley and oats into sheaves, and to place them into dozens of twelve sheaves each, and to set out every tenth dozen, is good, *Bishop of Exeter v. Skinner*, 486

## CONINGHAM.

*Quere*, Whether the prebendary of *Conningham*, in *Lincolnshire*, is entitled to the great tithes of the hamlets of *Somerville* and *Wheatbear*, in kind, or whether they are only one township, under a *modus* of ten pounds a year, payable on the first of *May*, in lieu of all such tithes arising therein, *Bremhead v. Aspsforth*, 347

## COSTS.

1. If a bill for tithes be defective for want of parties, and the defendant make a tender before it is amended, and the tender is found sufficient to cover the arrears of tithes, the plaintiff shall pay costs, *Henning v. Willi*, 31
2. If a defendant set up a *modus*, and tender it, and the plaintiff examine witnesses upon the whole of his case, without accepting the *modus*, and it is found a good *modus*, each party shall pay his own costs respecting such examination, *Boscawen v. Roberts*, 176
3. The plaintiff shall pay costs, if he refuses to accept a sufficient tender, *Ilbertson v. Burt*, 280

## COWS.

1. A custom to pay fourpence a year on the first of *August*, for every cow which had calved in the parish, in lieu of the tithes of milk and calves; twopence halfpenny



## A TABLE OF CONTENTS:

halfpenny for every heifer of the first calf, in lieu of tithe milk and calf; twopence for a farr milch cow, in lieu of tithe milk; threepence for a cow and a calf not fallen in the parish, but brought in for depasturage; twopence for every heifer kept a year within the parish; and twopence for the depasturing of any fattening beast, rejected, *Salt v. Swaine*, 297

2. A *modus* to pay fourpence a milch cow on *Easter Monday*, in lieu of tithe milk of the preceding year, is good, *Sbaw v. Robinson*, 325

3. A *modus* of twopence for every milch cow that has a calf, and one penny for every milch cow that has not a calf, in lieu of the tithe milk and calf of such cow during the year, is good, *Townly v. Tomlinson*, 341

4. A custom to pay a *shilling* a year at *Michaelmas* for every cow fed in a particular township, in lieu of the tithes of calves and milk, disallowed, *Worsley v. Aydon*, 385

5. A custom to pay eightpence a cow, and fourpence a heifer, at *Easter*, in lieu of tithe milk and calves, is good, *Smith v. Price*, 446

### CRAYFORD.

1. The rector of *Crayford*, in Kent, is entitled to the tithes of the parish, both great and small, in kind, *Walter v. Flint*, 293

2. See also *Walter v. Flint*, 508

### CRIGGLESTONE.

1. The custom of setting out the tithes of corn and grain in the township of *Crigglestone*, in the parish of *Santall Magna*, in *Yorkshire*, is for the occupiers to bind them into sheaves, to put the sheaves in equal numbers into shocks, and to set out every tenth shock; and to set out the odd shocks in sheaves, *Taylor v. Beaumont*, 401

2. The custom of *Crigglestone* to pay the vicar of *Sandall Magna* so much a year in lieu of tithe hay and agistment, as covers the tithes of clover mowed and made into hay, 401

VOL. III.

### CRONHAM.

The rector of *Cronham*, in *Gloucestershire*, is entitled to the tithes of the parish in kind, and particularly to the tithes of the reeds or germins cut from the stools of beech and other trees; and also to the tithes of coppice or underwood cut by *the lug*, and laid in *drifts*, *Walbank v. Hayward*, 512

### CUNDE.

The rector of *Cunde*, in *Shropshire*, is entitled to the tithes of *Hornage Grange*, in kind, *Adams v. Windsor*, 4

### CURRY.

The vicar of *North Curry*, with the chapelries of *West Hatch* and *Stoke Gregory*, in *Somersetshire*, thereto annexed, is only entitled to certain *moduses*, in lieu of the tithes of milk and garden-stuff, *Wilson v. Hooper*, 490

### CURRY MALLET.

1. The rector of *Curry Mallet*, in *Somersetshire*, is entitled to the tithes of *Park Farm*, in kind, *Pulney v. Utterman*, 16

2. He is also entitled to the tithes of the wool of lambs shorn at *Midsummer*, although tithes had been paid for the lambs on *St. Mark's Day*, *Pulney v. Utterman*, 17

### CUSTOM.

1. A custom that the tithes of agistment are only payable by those who live out of but rent lands in the parish, is bad, *Hill v. Braxson*, 19

2. A custom to pay five shillings an acre yearly for all lands sowed with wheat; two shillings and sixpence an acre for other grain; two shillings an acre for meadows mowed; one shilling and fourpence an acre for upland grass ground; and two shillings and sixpence for every farrow of pigs, is bad, the respective *modus*es being too rank, as approaching too near the present value of the tithes, *Torriano v. Legge*, 61

3. A custom to pay fourpence a year for every orchard in lieu of the tithes of  
O o all

## A TABLE OF CONTENTS.

- all fruit trees in the parish, is bad; for it is a *modus* of one tithe in lieu of another, *Torriano v. Feast*, 62 *notis*
4. A custom to pay ninepence a cow depastured on meadow land, and sixpence a cow depastured on upland, in lieu of the tithes of all cows, calves, and milk, is bad, *Torriano v. Feast*, 62 *notis*
  5. A custom to pay nine shillings a year for every yard land; five shillings for every whole cottage; and two shillings and sixpence for every half cottage, including the yards, orchards, gardens, and appurtenances, disallowed, *Halfstat v. Merry*, 66
  6. A custom to pay two shillings in lieu of every tenth lamb which yearly falls in the parish, and continues alive until the twenty-ninth of *June*, and certain rates for every lamb under ten, is bad, *Stanley v. Sharpe*, 67
  7. A custom not to pay tithe wool unless the sheep have been kept three months before shearing time, is bad, *Jones v. Fleet*, 72
  8. A custom to pay two shillings and sixpence for every lamb yeaned, from six to ten, is good, *Tutbill v. Day*, 85
  9. A custom to pay sixpence an acre for grazing ground, when fed with barren cattle, and fourpence an acre for after grass, is good, *Tutbill v. Day*, 85
  10. A custom not to cut the corn until it is full ripe, and then to set it out in shocks, and tithe the same as it is cut down, without waiting until the whole field is reaped, seems good, *Matber v. Holmwood*, 119
  11. A custom to pay one shilling a year, in lieu of the tithes of a particular piece of marsh land, is good, *White v. Layton*, 154
  12. A custom to pay two shillings an acre in lieu of the tithe of all grain reaped from the *inclosed arable land* of a parish, and one shilling and sixpence an acre for the tithes of the grain reaped on the *common field arable lands* therein, is bad, the sums being too rank to constitute a good *modus*, *Gale v. Carpenter*, 173
  13. A custom to pay one shilling a year at *Michaelmas* for every fat bullock agisted in the parish, in lieu of the agistment tithes of all barren and unprofitable cattle, is bad, *Boscawen v. Roberts*, 174
  14. A custom to pay one penny for any small quantity of hemp sown in the parish, is bad, *Boscawen v. Roberts*, 174
  15. A custom to pay fourpence a year, in lieu of the tithes of potatoes tilled in a ridge in the field for family use, and not for sale, is good, *Boscawen v. Roberts*, 174
  16. A custom to pay on *St. Thomas's Day* four shillings for every acre of wheat, and two shillings for every acre of lent corn which had been reaped in the parish during the preceding harvest, in lieu of the tithes of such wheat and corn, is bad, *Hulse v. Munk*, 213
  17. *Quere*, Whether a custom to pay twelvepence an acre for *moor lands*, and sixpence an acre for *uplands*, in lieu of the tithes thereof, be good, *Hulse v. Munk*, 213
  18. *Quere*, Whether a custom to pay twopence for every day's math of meadow ground, and a penny for every day's math of lays or pasture ground, in lieu of the tithe hay thereof, be good, *Taylor v. Eardley*, 234
  19. *Quere*. Whether a custom that no tithes are payable for wool or lambs, unless the sheep have been kept a whole year; that if they are sold before the third of *May*, a penny a sheep, and a halfpenny a lamb shall be paid; that if they are kept a year, that a halfpenny for every lamb under seven shall be paid; and that if there are seven or more, that then the tithe shall be paid in kind, and the parson pay one penny halfpenny for every lamb, be good, *Taylor v. Eardley*, 234
  20. A custom to pay four shillings for every ten lambs fattened; two shillings for every five lambs fattened; fourpence a piece for all under five; and for all above such five, and under ten, fourpence a piece, on the shearing day; and threepence a piece for all other lambs

## A TABLE OF CONTENTS.

- lamb's bred in the parish, in lieu of the tithes of such lambs, is bad, *Wood v. Harrison*, 252
21. A custom to make the first crop of clover into hay, in lieu of the tithes of the second crop, is good, *Wood v. Harrison*, 251
22. A custom to *make even* at *Easter* for as many calves as had fallen between *Easter* and *Easter*; viz. That if a farmer has ten calves, he is to pay the tenth calf, when five weeks old; that if such calf was five weeks old at *Holyrood Day*, it should be paid then; but if it was not, to be paid at the month's end; if but seven calves, then to pay one calf, and receive three halfpence, &c. disallowed, *Serjeant v. Adams*, 261
23. A custom to pay fourpence for every cow that has a calf in the parish, in lieu of the tithe milk and calf; twopence halfpenny for a heifer of the first calf fallen in the parish, in lieu of tithe milk and calf; twopence for a farr milch cow, in lieu of tithe milk; threepence for a cow and calf not fallen in the parish, but brought in for depasturage; twopence for a heifer kept a year in the parish; and twopence for the depasturage of a fatting beast, rejected, *Salt v. Swaine*, 297
24. A custom to pay one penny a sheep for all sheep bought after *Candlemas Day*, in lieu of the tithe wool and lambs thereof, rejected, *Salt v. Swaine*, 297
25. A custom that the tithe wool of all sheep in the owner's possession before *Candlemas*, shall be paid to the vicar for that year, rejected, *Salt v. Swaine*, 297
26. A custom that if a farmer have only seven lambs, he shall pay one to the vicar, and receive from him one halfpenny for each lamb, from seven to ten, on *May Day*, in every year, when he is to take the tithe lamb away; the owner being to chuse the two best, and the vicar the third best; but that if the farmer have less than seven lambs, the vicar shall have a halfpenny a lamb, rejected, *Salt v. Swaine*, 297
27. A custom to pay one sucking pig in ten; one pig in seven, the vicar paying one halfpenny for every pig from seven to ten; the tithe pigs to be taken at a fortnight old, rejected, *Salt v. Swaine*, 297
28. The same custom as to goslings, to be taken away at two months old, rejected, 298
29. A custom that every inhabitant, having any lamb or lambs yeaned therein, shall pay, on *Midsummer Day*, twopence a head for all under seven; one lamb in every seven, receiving sixpence; one lamb in eight, receiving fourpence; one lamb in nine, receiving twopence; and one lamb in ten, without receiving any thing, is good, *Sbarw v. Robinson*, 325
30. A custom to pay, on *Easter Monday*, twopence an acre for every acre of meadow or pasture ground that has been mowed and made into hay during the preceding year, in lieu of the tithes of hay, and depasturing barren and unprofitable cattle of the after grafs, is good, *Sbarw v. Robinson*, 325
31. A custom that every inhabitant, having any sheep shorn and depastured in the parish, shall, on or before *the Purification*, pay the full tithe of wool thereof on shearing day, although such sheep has been brought in after the preceding shearing day, so as they were there on *the Purification*; and that if the sheep be brought in after *the Purification*, and shorn in the parish he shall pay on shearing day the fleece of every such sheep sheared; so much a month for every six sheared sheep depastured in the parish; and threepence a sheep for all sheep not sheared in the parish, and brought in after *the Purification*, *Sbarw v. Robinson*, 326
32. A custom to pay teapence an acre for meadow and pasture ground occupied by persons living out of the parish, in lieu of the tithes thereof, is good, *Sbarw v. Robinson*, 326
33. A custom that every occupier who keeps a cow, except a milch cow, shall pay a penny in lieu of all agistment tithes of dry, barren and unprofitable cattle, 002



## A TABLE OF CONTENTS.

- cattle, is bad, *Townley v. Tomlinson*, 341
34. A custom that the occupiers of lands shall set up the tithes of corn and grain in sheaves and hattocks, and that in consideration thereof they shall only pay the tenth hattock, and nothing for odd hattocks under ten; and that the corn and grain in each close, of each kind, shall be tithed distinctly, without counting out of one close into another, or out of one kind of grain to another, is bad, *Townley v. Tomlinson*, 341
35. A custom to pay one pig, if the number be above seven, and under seventeen; two pigs, if under twenty-seven; and so one pig for every ten pigs above seventeen, disallowed, *Townley v. Tomlinson*, 342
- 36 The same custom as to geese disallowed, 342
37. A custom that the tenants of certain lands which are tithe free in the hands of the owner, shall pay one halfpenny a year to the parson, in lieu of the tithe hay thereof, disallowed, *Townley v. Tomlinson*, 342
38. A custom to pay on *All Saint's Day* thirteen shillings and fourpence, in lieu of every tithe calf sold before that day; that if the breeder has only four calves in a year, no tithe is to be paid thereof; that if he has five, he is to pay half a calf; if six, a whole calf; if fifteen, a calf and a half; if sixteen, two calves; and if more than sixteen, then every tenth calf; but that if the breeder keep his calves until *All Saints Day*, he shall pay the tithes of such calves in kind, disallowed, *Snowden v. Shotton*, 369
39. A farm *modus* of twenty pound a year disallowed, *Edwards v. Burroughs*, 374
40. A custom to pay twenty four pounds a year on *Lady Day*, in lieu of all vicarial tithes arising on the *demaine lands* of a manor, and of the tithes arising from the *flock of sheep* called the *hall flock*, which the lord of the manor was entitled to feed throughout the year on all or any of the waste grounds therein, and from twenty-three days after the farmer of the *tithe farm* had began harvest, to *Lady Day* following, on all the lands of the manor now sown with corn or grain, disallowed, *Tookis v. Cornell*, 375
41. A custom first to make hay into staddles or winrows, and afterwards to separate and divide the same into several parts, as near as may be, and after it is so separated and divided, to set out the eleventh part of the hay, without quailing the same, as and for the tithes of such hay, is good, *Hurd v. Buxton*, 381
42. A custom to sever wheat, and bind it up in sheaves, and place the sheaves in shocks, and then to pitch nine sheaves into the waggon, leaving the tenth sheaf for the rector, is good, *Brograve v. Mace*, 397
43. A custom to sever barley and oats, and divide them into swarths, and to set out the tithes as they lay in swarths. when the barley and oats is cut with the scythe, is good, *Brograve v. Mace*, 398
44. A custom to put the sheaves of barley or oats, when mowed, into shocks, and to throw them in heaps on the stubble, until enough is collected to set out the tithes thereof, is good, *Brograve v. Mace*, 398
45. A custom to give a rector three *stints*, or a right of depasturing fifteen sheep on a common at all times of the year, in lieu of the tithes of such common, is good, *Naylor v. Bilton*, 399
46. A custom to set out the tithes of corn and grain in shocks, and the odd shocks in sheaves, is good, *Taylor v. Beaumont*, 401
47. A custom to pay five shillings an acre, in lieu of the tithes of weld, is good, *Taylor v. Beaumont*, 401
48. A custom to pay so much a year in lieu of tithe hay includes clover-grass made into hay, *Taylor v. Beaumont*, 401
49. A custom to set out wheat by every tenth sheaf in the open field, in such a way as it may be compared with the nine

## A TABLE OF CONTENTS.

- nine parts, and to tithe such a quantity at a time as the number of men employed, the acres to cut down, and the circumstances of the weather make most convenient to the farmer, without being injurious to the parson, is good, *Audrews v. Eaton*, 408
50. A custom for the landholders who reside in a parish to pay ninepence an acre, and those who reside out of the parish tenpence an acre, in lieu of all tithes, both great and small, arising therein, is good, *Pennell v. Odling*, 444
51. A custom that the rector shall have A BUCK in the summer season, and A DOE in the winter season, and the run of a horse throughout the year, in lieu of the tithes of certain park lands, is good, *Piper v. Chapman*, 451
52. A custom to pay so much for the tithes of cows, calves, &c. by owners of land who occupy the same, is good; and a person who holds lands on a lease for three lives is an owner of the land within the benefit of the custom, *Hawkins v. Channon*, 452
53. A custom to pay tithes in kind for the feeding of all barren cattle under a year old, and fourpence an acre for all barren cattle above a year old, if depastured for the course of one month, is good, *Bateman v. Aistroppe*, 464
54. A custom that the wool of all sheep in hand on the shearing day, though depastured in the parish less than a year, shall be taken in lieu of the agistment tithe of all sheep depastured from shearing day until they are sold, is bad, *Bateman v. Aistroppe*, 463
55. A custom to pay threepence a-head for sheep agisted between *Candlemas Day* and *shearing day*, and a *fleece* for every score of sheep brought in after the second of *February*, is bad, *Bateman v. Aistroppe*, 463
56. A custom to pay a halfpenny for every fleece of wool and every lamb under five, called *odds of wool and lambs*, in lieu of tithes in kind, is bad, *Bateman v. Aistroppe*, 462
57. A custom to pay for every dwelling-house and fire-hearth, yard, or privy tithe, otherwise called *shot and wax*, twopence halfpenny, is bad, 462
58. A custom stated to pay for every calf under seven an halfpenny, and if seven then twentypence a-year, in lieu of the tithe thereof in kind, 462
59. A custom or *modus* to pay sixpence a-year at *Easter*, in lieu of all tithes, oblations, and ecclesiastical dues whatever, arising on *all and every or any* of the farms and lands in a particular township, is bad, *Heatcote v. Appleton*, 478
60. A custom stated thus:—"That the occupiers of the ancient cultivated lands in the township of *Symond's Wood*, had immemorially paid, at *Easter*, three pounds as a *modus*, in lieu of all kind of tithes, and for all and every the messuages and lands anciently cultivated and improved in *Symond's Wood*; AND ALSO, after other lands there were taken in and cultivated a like sum of three pounds a-year, in lieu of the tithes of such uncultivated lands, making together six pounds a-year," is bad, *Heatcote v. Appleton*, 478
61. A custom that the farmer shall bind his wheat into sheaves, and set it up in stiches or shocks of ten sheaves each, and place a bough on every tenth stich or shock, beginning at that end of the field from whence he carries in his nine parts, and that if there be any odd stiches the tithes shall be set out in the same manner in sheaves, with a bough on every tenth sheaf, is good, *The Bishop of Exeter v. Skinner*, 486
62. A custom that the farmer shall bind his barley and oats into sheaves, and place them in dozens of twelve sheaves each, with a bough on every tenth dozen, and that if there are any odd dozens, the tithes shall be set out by sheaves, is good, *The Bishop of Exeter v. Skinner*, 486
63. A *modus* to pay twenty-seven pounds a-year, in lieu of the tithes of farms worth six hundred pounds a-year, disallowed, *Bowles v. Comer*, 519

## A TABLE OF CONTENTS.

64. A custom for all the occupiers of houses in a particular township to pay a *tithe penny*, in lieu of the tithes of hay, is void, *Travis v. Oxtou*, 531

65. A custom to pay sixpence for every lamb depastured in *the Inclosures*, and fourpence for every lamb depastured in the *Common and Lands* of a parish, in lieu of the tithe of lambs, is good, *Day v. Lake*, 536

66. A custom to pay two shillings and sixpence for every *sow*, in lieu of tithe pigs, is good, *Day v. Lake*, 536

### CYDER AND PERRY.

A custom to pay threepence a pipe of cyder in a particular division of a parish, in lieu of the tithes thereof, and twopence a pipe in all the rest of the parish; and that if the owner sell the apples he shall pay the tenth penny they produce, stated, *Serjeant v. Adant*, 262

### D.

#### DECUMANS.

The vicar of the parish of *Saint Decuman's*, in *Somersetshire*, is only entitled to twopence a cow in lieu of tithe milk; to sixpence for every calf fallen, sold, or killed, in lieu of tithe calves; to one halfpenny for every calf reared; to one penny for every ancient garden; and to one penny for every acre of grass cut or mowed in the first year after the tillage thereof, *Clawes v. Knysion*, 447

#### DENNY ABBEY.

See WATERBEACH.

#### DEPTFORD.

The vicar of *Deptford*, in *Kent*, is not entitled to the tithes of *the Water Corn Mill*, or to the tithes of *the Wind Mill* used for the purpose of grinding meal

to feed hogs with within the parish of *Greenwich*, *Wilson v. Mason*, 285

### E.

#### EAST HAM.

1. The vicar of *East Ham*, in *Cheshire*, is entitled to the tithes of potatoes planted in the fields, *Travis v. Gell*, 372

2. The vicar of *East Ham* is only entitled to a *modus* of forty shillings a-year in lieu of the small tithes arising on *the Demesne Lands* of the manor of *Netherpoole*, *Travis v. Oxtou*, 531

3. The custom for the occupiers of certain farms in the townships of *Little Sutton* and *Great Sutton* to pay a *tithe penny*, in lieu of the tithes of hay in kind, is void, *Travis v. Oxtou*, 531

4. The vicar therefore is entitled to the tithes of hay of the said townships in kind, *Travis v. Oxtou*, 531

5. He is also entitled to agistment tithes for all barren and unprofitable cattle fed on lands in the several townships of *Great Sutton*, *Little Sutton*, and *East Ham*, *Travis v. Mason*, 531

#### ELSTREE.

1. The rector of *Elstree*, in *Hertfordshire*, is entitled to the great and small tithes of the parish of *Elstree*, and also to the tithes arising on *Barbam Wood Common*, in kind, *Clarke v. Roads*, 488

2. The inhabitants of *Elstree* cannot turn in sheep to graze on *Barbam Wood Common*, but it is open to every other kind of commonable cattle, *Clarke v. Roads*, 489

3. *Quare*, Whether there are not certain *moduses* in the parish of *Elstree*, 489

#### ERITH.

The vicar of *Erith*, in *Kent*, is entitled to the small tithes of the parish in kind, *Gilbert v. Brook*, 476

#### ERRISWELL.



## A TABLE OF CONTENTS.

### ERRISWELL.

The rector of *Erriswell*, in *Suffolk*, is entitled to the tithes of all *rabbits* taken in the warrens and borders of the parish, and sold by the owners or occupiers thereof, *Ball v. Robinson*, 470

### EVIDENCE.

1. *Quare*, Whether a *modus* of four pounds a-year, in lieu of the tithes of land anciently worth forty pounds, being the exact tenth part of the value, is evidence of its being a good *modus*, *Noel v. Burgin*, 272
2. A deposition respecting *moduses* not allowed to be read, *Salt v. Swaine*, 299
3. A copy of an answer not allowed to be given in evidence, *Salt v. Swaine*, 299
3. An indenture between the owner of a village and the vicar of a parish made with the consent of the patron, and reciting that a certain *modus* had been paid, and continuing the payment of it, is no proof of its legality, *Lloyd v. Mortimer*, 517
5. See also *Froome v. Rawlins*, 547

### EWHURST.

The rector of *Ewhurst*, in *Surry*, is entitled to the tithes of calves, milk, and sheep, and to *Easter* offerings; but *quare* as to the tithes of corn and hay, and the tithe wood of *Coverwood Farm*, *Bickerton v. Cbennell*, 454

### F.

### FISH.

1. The manner in which the tithes of fish caught in the fisheries of *Saint Ewe's* and *Megawissey*, in *Cornwall*, shall be paid, *Williams v. Baron*, 132
2. The manner in which the impropiator of *Saint Kevern*, in *Cornwall*, is entitled to the tithe of fish, *Wills v. Harris*, 385

3. The manner in which the vicar of *Madron*, in *Cornwall*, is entitled to the tithe of fish, *Burlage v. Batten*, 499

### FLANDEN.

The vicar of *Hemel Hempstead*, in *Hertfordshire*, or his curate, is entitled to the tithes of the chapelry of *Flanden*, *Stirling v. King*, 87

### FORD.

The rector of *Ford*, in *Shropshire*, is entitled to the tithes of the coppice wood and black poles cut in *Bickley Coppice*, *Amler v. Jackson*, 225

### FRAMDEN.

The vicar of *Framden*, in *Suffolk*, is entitled to the tithes of the parish in kind, *Baumont v. Shilcott*, 171

### FREETHORPE.

- The vicar of *Peetthorpe*, in *Norfolk*, is entitled to the tithes of *clover hay* arising in the parish, *White v. Read*, 158
2. The vicar of *Freethorpe* is only entitled to a *modus* of one pound, nine shillings, and twopence a-year, in lieu of the tithes of *Good's Marsh*, *Holly Holmes Marsh*, *Great Mill Marsh*, *Upper Darley*, *Lower Darley*, *Longford Marsh*, *Little Mill Marsh*, and *Little Darley*, *Emmett v. White*, 215

### FROME VANCHURCH.

1. The rector of *Frome Vanchurch*, in *Dorsetshire*, is only entitled to a *modus* of one shilling and twopence a-year in lieu of the tithe of milk, cows, and calves, arising in the out-tithing of *Cattislock*, *Churchill v. Cabell*, 108
2. The lands called *Cbentinarie Farm* lie in the out-tithing, *Churchill v. Cabell*, 110

### FRUIT.

1. A *modus* of fourpence for every orchard, in lieu of the tithes of all fruit trees, is bad, *Torriano v. Feast*, 62  
*notis*
2. A custom that for meat pears and apples for sale the tenth bushel is payable  
O Q 4

## A TABLE OF CONTENTS.

payable at the tree, but that when the owner gathers them, giving notice thereof to the vicar, or when, upon request made by the vicar, the owner houses the tithe pears and apples, and sells them with his own, he shall pay at *Easter* the tenth penny of what they produced, disallowed, *Serjeant v. Adams*, 262

### FURZE.

1. *Quare*, Whether furze cut upon an estate, and used for the purpose of firing a lime-kiln, the lime of which is entirely used for the making of manure to improve the land, or the burning of bricks to repair the buildings of the said estate, be titheable, *Yateman v. Cox*, 307
2. Furze used for burning of lime, though the lime be used for manuring the farm lands and other purposes of husbandry thereon, shall pay tithes, *Penfold v. Bartley*, 353
3. Furze cut on a large common in right of lands holden in another parish, and used for the burning of lime to make bricks which are entirely used for the necessary repairs of the farms in the parish where the land lies, shall pay tithe to the vicar of the parish in which such furze was cut, *Ellis v. Fermor*, 382

### G.

#### GARSTANG.

1. The demesne lands of the manor of *Pilling*, in the parish of *Garstang*, in *Lancashire*, although they were formerly parcel of the abbey of *Cockersand*, and tithe free in the hands of the abbot, are liable to tithe, *Townley v. Tomlinson*, 37
2. See also *Townley v. Tomlinson*, 336

### GEES E.

1. A custom that if the owner have ten goslings hatched in the parish, the vicar shall have one, but that if he have only

seven, the vicar to have one on paying one farthing a gosling from seven to ten, the tithe gosling to be taken away at two months old, rejected, *Salt v. Savaine*, 298

2. A custom to pay one gosling if the number exceed seven and be under seventeen; two, if above seventeen and under twenty-seven; and one for every ten above seventeen, disallowed, *Townley v. Tomlinson*, 342

### GILLINGHAM.

The vicar of *Gillingham*, with the chapels of *Mottiscomb*, *East Over*, and *West Over*, in *Dorsetshire*, annexed, is entitled to the small tithes of the chapelry of *Mottiscomb* in kind, *Hume v. Wright*, 520

### GLOSSOP.

The impropriator of the rectory of *Glossop Dale*, in *Derbyshire*, is entitled to the tithes of corn, grain, and other great tithes, arising in the village of *Chindrey*, otherwise called *Marnston Field*, in the said parish and county, *the Duke of Norfolk v. Taylor*, 112

### GNOSALL.

The impropriator of the tithes of the parish of *Gnosall*, in *Staffordshire*, is entitled to the *sixteenth part* of the corn and grain, and the *tenth part* of every other titheable matter arising on the lands belonging to *Walton Grange*, *Le Clare v. Jones*, 541

### GRANGE DE LYNCS.

The large tract of land called *Grange de Lyncs*, adjoining to the parish of *Rysole*, in *Lincolnshire*, is not titheable to the rector of *Rysole*; and *quare*, if it be not tithe free while in the manurance of the owner of the inheritance, as having formerly been parcel of the monastery of *Barkings*, a monastery of the *Præmonstratensian order*, *Bru v. Chaplin*, 409

### GRIMSTON.

The impropriator of *Grimston*, in *Dorsetshire*, is entitled to the tithes of *Langford Farm*, *Henning v. Willis*, 29

### GRITTLINGTON.

## A TABLE OF CONTENTS.

### GRITTLINGTON.

The rector of *Gritlington*, in *Wiltshire*, is entitled to the tithe of milch cows and calves in kind, *Pollok v. Serjeant*, 377

### GWINEAR.

The vicar of *Gwinear*, in *Cornwall*, is entitled to the tithes, except of corn and grain, arising on the two estates called *Drewallas* and *Bosparva*, in kind, *Bennett v. Tocker*, 460

## H.

### HALTON.

1. The rector of *Halton*, in *Lancashire*, is entitled to the tithes of corn, hay made on the natural meadows, turnips, and depasturing of cattle on *the Demesne Lands* belonging to *Halton Hall*, in kind, *Weiberhead v. Bradshaw* 426
2. But it seems, that he is only entitled to one penny a rood, in lieu of the tithes of hay and clover grown on *the Low Grounds*, *Wetherhead v. Bradshaw*, 432
3. The particular kinds of grounds which are considered *Ley Grounds* described, 426
4. The mill built on the site of *the Manor Mill* in this parish is an ancient mill, and free from tithes, 434

### HAMPTON.

The rector of *Minchinhampton*, in *Gloucestershire*, is entitled to the tithes of *the Down* and *the Sheep Walk*, *Heaton v. Miller*, 373

### HARBURTON.

The owner of the tithes of *Harburton* and *Hollywell*, in *Devonshire*, is entitled to verbal notice from the farmers to attend and see the corn justly tithed, *Helgar v. Triff*, 129

### HARNAGE GRANGE.

The farm and lands called *Harnage Grange*, in the parish of *Cumbe*, in *Shropshire*, are not tithe free, although they were formerly parcel of the monastery of *Byld*, the monks of which were of the *Cistercian order*, *Adams v. Windsor*, 7

### HARPTREE.

1. There is a *modus* of twopence an acre payable for all land in the parish of *West Harptree*, in *Somersetshire*, when such lands are mowed and the produce made into hay, in lieu of the tithe hay of such lands, *Brickdale v. Earle*, 422
2. But *quære*, if there is not a distinction in this parish between *ancient meadows* and *modern meadows* as to the above *modus*, *Brickdale v. Earle*, 423

### HASCOMB.

The rector of *Hascomb*, in *Surry*, is entitled to the tithes of *Lodge Farm*, *Markwith Farm*, *Parkbatch Farm*, *Giles Farm*, and *Spring Field*, in kind, *Horton v. Goddard*, 147

### HATFIELD.

1. The vicar of *King's Hatfield*, otherwise called *Hatfield Broad Oak*, in the county of *Essex*, is entitled to tithes in kind of all wood and underwood felled and cut in *Poplar's Wood*, in *Carter's Grove*, and in *the Brunsend Quarter* of the parish, *Wray v. Jocelyn*, 204
2. He is also entitled to the tithes of wood in kind in *Waiter's Grove*, *Bos's Spring*, *Rose Wood*, and *Garland Spring*, and also to the tithes of hops, wool, apples, and other small tithes, *Wray v. Barrington*, 479

## HAY.

1. Coarse grass cut and made into hay, in order to supply the place of straw, and used for ropes to cover a hay stack, or to thatch with, is not titheable, *Thorpe v. Bendlowes*, 40
2. A *modus* to pay two shillings an acre for meadow mowed, and one shilling and



## A TABLE OF CONTENTS.

- and fourpence an acre for upland grass grounds, is too rank, *Torriano v. Feast*, 62 *notis*
3. A bill for the tithes of a few cocks of rushy hay dismissed, *Horton v. Goddard*, 149
  4. Clover hay is titheable as a small tithe, *White v. Read*, 158
  5. *Quare*, Whether a *modus* to pay twopence for every day's math of meadow ground, and one penny for every day's math of ley ground; in lieu of tithe hay, be good, *Taylor v. Eardley*, 234
  6. A custom to make the first crop of grass into hay, in lieu of tithes of the second crop, is good, *Wood v. Harrison*, 252
  7. The manner in which tithe hay shall be set out when it is agreed to set it out in swarths, *Ilbertson v. Hurst*, 279
  8. A custom that *inhabitants* shall pay twopence an acre for all meadow and pasture land, in lieu of the tithes of hay and of the agistment tithes of the after-grass, excepting such lands as were summer eaten and not mowed; and that *outdwellers* shall pay tenpence an acre for the meadow and pasture land they had in the parish, including all grasslands, whether mowed or eaten, is good, *Sbarw v. Robinson*, 326
  9. It is no excuse for not setting out the tithes of hay, that the parson did not come to see it properly set out, on notice given to him that the mowing was in the grass-cock, and ready to be tithed, *Smith v. Maundrell*, 333
  10. A custom that when certain lands, which are tithe free in the hands of the owners of the inheritance, are let to tenants, such tenants shall pay one penny only a-year to the parson in lieu of the tithe hay thereof, disallowed, *Townley v. Tomlinson*, 342
  11. A custom to make hay into winrows, and then to divide them into equal parts, and to set out *the eleventh part* of such hay, without quailing it, as and for *the tithes* thereof, is good, *Hurd v. Buxton*, 381
  12. A custom to pay so much in lieu of tithe hay and agistment tithes extends to clover grass, whether mowed or fed, *Taylor v. Beaumont*, 401
  13. A custom to pay one penny an acre for every acre of grass mowed, the first year after the tillage thereof, in lieu of the tithe hay, is good, *Cleaves v. Knifton*, 447
  14. A custom for all the occupiers of houses in particular townships to pay a *tith penny*, in lieu of tithe hay, is void, *Travis v. Oxton*, 531
- ### HEDGEROWS.
1. Wood cut from hedgerows for sale is titheable, *Holt v. Buck*, 23
  2. Wood cut from hedgerows for fuel is titheable, *Tinmins v. Waugh*, 90
- ### HEMEL HEMPSTEAD.
1. The curate of the chapel of *Bowington*, in the parish of *Hemel Hempstead*, in *Hertsfordshire*, is entitled to an annuity of ten pounds a-year, *Stirling v. Burroughs*, 75
  2. And to the tithes of the chapelry, *Stirling v. King*, 87
- ### HEMP.
- A custom to pay one penny for the tithes of any small quantity of hemp sown in the parish, by an occupier of lands therein, is bad, *Bescarwen v. Roberts*, 175
- ### HEMSWORTH.
- The manner in which the rector of *Hemsworth*, in *Yorkshire*, is entitled to the tithe of the second crop of clover hay; of turnips fed off by sheep which has paid tithes; and of the depasturing of lambs fattened for sale, *Wood v. Harrison*, 250
- ### HIGHWORTH.
- The vicar of *Highworth*, in *Wiltshire*, is entitled to the tithes of clover seed, rye grass seed, and saintfoin seed, *Clarks v. Stapler*, 121
- ### HIGLEY.
- The vicar of *Higley*, in *Sbropshire*, is entitled to the small tithes of *the Woodend Estate*,

## A TABLE OF CONTENTS.

*Estate, and the Claverley Lands in kind, excepting firewood, for which a smoke penny is payable yearly, Fleming v. Brown,* 194

### HOLBEACH.

The manner in which the vicar of *Holbeach*, in *Lincolnshire*, is entitled to the tithes of the vicarage, and particularly of hay, sheep, and agistment tithes, *Willis v. Harvey,* 196

2. See also *Willis v. Fotheringham,* 330

### HOPS.

1. Tithes of hops shall be accounted for, although no demand was made for the same until they have been dried, bagged, and paid the duty, *Jones v. Fleet,* 72

2. A custom to pay the tenth pound of hops, when gathered and dried, stated, *Bulford v. Sambell,* 514

### HORNSEY.

The rector of *Hornsey*, in *Middlesex*, is only entitled to fourpence an acre from the occupiers of lands therein. in lieu of all tithes, both great and small; the agistment of cows and other cattle; and all other rectorial demands arising therein, *Llwyd v. Brown,* 106

### HORSES.

1. If a gentleman's coach-horses are employed occasionally in drawing manure from the parish in which the owner lives to his farm in an adjoining parish, or are otherways used for purposes of profit, as by fetching coals, bricks, wood, &c. tithes are payable for depasturing them, *Thorpe v. Benalowses,* 39

2. Brood mares taken in to feed at so much a week pay an agistment tithe, *Hugill v. Coates,* 73

3. Horses kept for a post-chaise pay agistment tithe, *Willis v. Harvey,* 199

### HOUGHTON.

1. The rector of *Houghton*, in the county of *Durham*, is entitled to the great and

small tithes of the parish in kind *Thorpe v. Benalowses,* 38

2. The rector of *Great Houghton*, in *Northamptonshire*, is entitled to the great tithes in kind, and to two shillings an acre, or to four shillings a-head, for the tithes of depasturing barren cattle, *Goodfellow v. Roberts,* 301

### HOOKER'S RENTS,

See ALDGATE.

### HUCKLECOTT,

See CHURCHDOWN.

### I.

### ICKLEFORD.

The vicar of *ICKLEFORD cum Pirton*, in *Hertfordshire*, is entitled to the tithes of hay, to all small tithes, and to *Easter* offerings, from the occupiers of land in the manor of *Pirton*, *Barrett v. Finmer,* 14

### K.

### KILVINGTON.

1. The rector of *South Kilvington*, in *Yorkshire*, is only entitled to receive from the owner of the grounds called *Upsall Park*, one buck in the summer season, and one doe in the winter season, and grafs or pasture for one gelding or mare on the said grounds throughout the year, in lieu of all tithes whatsoever arising on the said grounds, *Piper v. Chapman,* 448

2. The occupiers of lands in this parish are not bound, by any custom in the parish, to set out their tithes in shocks, ricks, and cocks, *Piper v. Chapman,* 449

### KINALTON.

## A TABLE OF CONTENTS.

### KINALTON.

There are certain lands in the parish of *Kinalton*, in *Nottinghamshire*, that pay a *modus* of three pounds, twelve shillings, and twopence, to the vicar of *Kinalton*, and seven shillings and tenpence to the vicar of the adjoining parish of *Colston Bassett*, in lieu of all tithes both great and small, except the tithe of eggs, *Noel v. Burgin*, 270

2. The reason of this custom stated, 274

### KINGSCLERE.

The vicar of *Kingsclere*, in *Hampshire*, is entitled to the tithes of all grafs seeds in the parish, and to the tithes of corn, grain, and all other great and predial tithes in the vills of *Laputree* and *Balrisham*, and the lands called *De La Heitbr*, *Powlett v. Bates*, 466

### KNOWLE,

*See* BEDMINSTER.

### L.

### LAMBS.

*See* SHEEP AND LAMBS.

### LANDULPH.

The rector of *Landulph*, in *Cornwall*, is only entitled to one penny at *Michaelmas* for every milch cow, in lieu of tithe milk; and to twopence a hogthead of cyder in lieu of the tithes of the apples of which it was made; but *quære*, whether he is entitled to the other tithes in kind, *Bidford v. Sambell*, 514

### LAUGHTON.

1. The prebendary of *Laughton*, in *Yorkshire*, is entitled to the great and small tithes of *Deep Carr's Farm*, *Stubbing's Farm*, and *the Horse Course*, in the parish of *South Anston*, in kind, *Rogers v. Parkin*, 296

2. *Quære*, Whether the prebendary of *Laughton* is entitled to tithes in kind, or only to *sixpenny moduses* in lieu of the

tithe hay of certain lands in *South Anston*, *Norib Anston*, and *Woodsetts*, *Rogers v. Twibell*, 472

3. *Quære*, Whether there is a *modus* of two shillings a-year payable to the prebendary in lieu of the tithes of the estate called *Cotterell Woods*, in the township of *Woodsetts*, in the parish of *Anston*, *Rogers v. Champion*, 475

### LEACHLADE.

The vicar of *Leachlade*, in *Gloucestershire*, is entitled to the tithes of *the Priory Lands* in kind, and to *moduses* of ninepence a cow, and threepence a calf, in lieu of the tithes thereof, *Bowles v. Luckett*, 125

### LEASE.

1. A lease of tithes cannot be taken advantage of by a purchaser of the estate, unless it is assigned to him, *Barber v. Elliot*, 178

2. Specific performance of an agreement for a lease for tithes decreed, *Reeb v. Summers*, 218

3. If a person holds lands under a lease determinable on three lives, he is so far the owner of such lands as to be thereby entitled to the benefit of a *modus* payable only by the owners of lands who are also occupiers of the same, *Hawkins v. Channon*, 452

### LEIGHS.

1. The tenth meal of milk in the parish of *Little Leighs*, in *Essex*, is to be carried to the church-porch as the tithes thereof for the rector; for he is not obliged, by the custom of the parish, to fetch it from the cow-house where the cows are milked, *Morgan v. Neville*, 152

2. The same point again determined, *Morgan v. Neville*, 434

### LESTRINGHAM.

The rector of *Lestringham*, in *Yorkshire*, is entitled to the great tithes of the townships of *Sparunton* and *Appleton*, and particularly to the great tithes of *the Demesne Lands* of the manor of *Sparunton*, although the same were formerly parcel



## A TABLE OF CONTENTS.

of the monastery of *Saint Mary*, near the walls of *York*, and were held, with the rectory of *Lestringham*, in unity of possession by the proprietor of the monastery, *Shephard v. Hartas*, 503

### LETCOMBE BASSETT.

The rector of *Letcombe Bassett*, in *Berkshire*, is entitled to the tithe wool of sheep fed on *Court Down* by a tack shepherd of the parish of *West Challow* from the twelfth of *May* to the sixth of *June*, and then sheared in *West Challow*, and afterwards depastured on *Court Down* until they are sold, *Wells v. Pags*, 299

### LIMITATION.

A bill demanding tithes of thirty years dismissed as to all tithes which had become due before six years prior to the filing of the bill, *Garrard v. Scollar*, 415

### LITTLE LEIGHS.

See LEIGHS.

### LITTLE TEY.

See TEY.

### LLANSANFREDE.

The prebendary of the prebend of *Llansanfrede*, in *Radnorshire*, is only entitled to the sum of one pound, six shillings, and eightpence a-year from the vicar of the parish, and not to two-thirds of the vicarial tithes, *Morgan v. Williams*, 451

### LLANVYNITH.

The impropiator of *Llanvynith*, in *Caermarthenshire*, is entitled to two-third parts, and the vicar to the other third part of the great and small tithes of the parish, by the custom of which the landholders are to give proper notice of the setting out of their tithes, *Prytherch v. Thomas*, 350

### LOUGHBOROUGH.

The rector of *Loughborough*, in *Leicestershire*, is entitled to the great and small

tithes of *Loughborough Park* and *Widderbrook Closes* in kind, *Bickham v. Langdale*, 139

### LUGWARDINE.

The vicar of *Lugwardine*, with the chapel of *Saint Weanard's* annexed, in *Herefordshire*, is entitled to the tithes of *Prior's Wood* in the said chapelry, *Evans v. Gwillim*, 20

### LUMLEY.

The grantees of the crown of the tithes of the prebendary of *Lumley*, formerly belonging to the deanery of *Chester*, are entitled to the tithes of *Great Lumley*, *Little Lumley*, and *Woodend*, and particularly to the tithes of those lands which were formerly the *Park*, and to the lands called *White Cross* and *Houghton Gate*, in *Little Lumley*, *Thornton v. Lumley*, 44

### LYMING.

The rector of *Lyming*, in *Kent*, is entitled to the tithes of the hamlets of *Sondford* and *Puddlesworth* in kind, *Prix v. Elwy*, 63

## M.

### MADRON.

The vicar of *Madron*, in *Cornwall*, is, by the custom of the parish, entitled to the tithes in kind of all sea-fish caught by the boats, seynes, and nets belonging to the said parish; and all boats, seynes, and nets which are housed or moored in the parish during the intervals of the fishing seasons, are reputed and taken to belong thereto, *Borlase v. Batten*, 499

### MAIDS MORTON.

The rector of *Maids Morton*, in *Buckinghamshire*, is entitled to the tithes of hay arising on the lands called the *Deep Meadow*, the *Middle Meadow*, and *Backford Meadow*, *Hutton v. Stewers*, 93

## MAINSTON

## A TABLE OF CONTENTS.

### MAINSTON FIELD.

*See GLOSSOP.*

#### MANURE.

1. A crop of vetches or other vegetables ploughed into the ground while standing, in order to meliorate the soil for a subsequent crop, is not titheable, *Hennings v. Willis*, 30
2. If a gentlemen's coach-horses be occasionally employed in drawing manure for profit, tithes are payable for depasturing of them, *Thorpe v. Bendlowes*, 40
3. *Quere*, Whether furze cut and burnt in a lime-kiln, the lime of which is entirely employed to manure the estate from which the furze was cut, be titheable, *Yateman v. Cox*, 307
4. It is liable to be tithed, *Pensfold v. Bartlett*, 353

### MARSHFIELD.

The vicar of *Marshfield*, in *Gloucestershire*, is entitled to the tithes, except of cows and calves arising on *Marshfield Farm*, in kind, and to a *modus* of fourpence a-year for every milch cow, and fourpence a-year for every calf, in lieu of the tithes of such cow and calf, *Mi. bell v. Lampard*, 58

### MARSH GIBBON.

The rector of *Marsh Gibbon*, in *Buckinghamshire*, is entitled to the tithes of the parish in kind, *Shute v. Guy*, 164

### MASSAM.

The impropriator of *Massam*, in *Yorkshire*, is entitled to the tithes of wool and lambs arising on *Sigsworth Grange* in the said parish, *Pickersgill v. Sargison*, 275

### MATHON.

The impropriator of *Mathon*, in *Worcestershire*, is entitled to the great and small tithes of *Spout Farm*, *H-n-green Farm*, *Hall Court Farm*, and *Croft Farm*, in kind; *The Dean and Chapter of Westminster v. Gwilliam*, 253

### MATSON.

The rector of *Matson*, in *Gloucestershire*, is entitled to the tithes of the parish in kind, *Edwards v. Burroughs*, 374

### MEGAVISSEY.

*Quere*, Whether the vicar of *Megawissey*, in *Cornwall*, is entitled to a tenth part of the portion of fish given to the men employed in the fishery, as the same is brought into the parish, as well from the shares of those men who inhabit the parish of *Megawissey* as from the shares of those men who are hired out of other parishes, *Williams v. Baron*, 132

### MERROW.

1. The rector of *Merrow*, in *Surry*, is entitled to tithes for part of the lands belonging to *Temple Court Farm*, but those lands, parcel thereof, which were part of *Clenden Park*, and are now inclosed, were formerly part of the possessions of the priory of *Saint John of Jerusalem*, and are discharged from the payment of tithes when in the occupation of the owners, and when let to tenants are only subject to a *modus* of ten marks a-year, *Striet v. Wood*, 266
2. A pension of two pounds, thirteen shillings, and fourpence a-year is due from the rector of *Merrow* to the owner of those lands which formerly belonged to the nuns of *Saint Margaret*, 268

### MIDDLETON.

(HAMPSHIRE.)

The prebendary of *Middletown*, in *Hampshire*, is entitled to the tithes of the parish, excepting certain tithes with which the vicar is endowed; but the estate called *Forston Farm*, and the woodland called *Hare Wood*, are tithe free, as having been formerly parcel of the possessions of the abbey of *Wherall*, *Woodcock v. Iremonger*, 50

### MIDDLETON.

(YORKSHIRE.)

The rector of *Middletown*, in the *Walds of Yorkshire*, is entitled to the tithes of a certain

## A TABLE OF CONTENTS.

certain piece of land, called "*The Twelve Oxgangs*," lying in *the Flatts*, and of the two closes called *Swang Close* and *South Close*, *Breary v. Manby*, 43

### M I L K.

1. The tithes of milk consumed in the family of the owner of the cows not decreed, *Hugill v. Coates*, 73
2. The cow-keepers in the parish of *Little Leighs*, in *Essex*, are bound to carry the tithe milk by every tenth meal to the church porch, *Morgan v. Newille*, 152
3. Tithes are payable of milk produced by cows entirely fed on turnips, hay, and stover, for all which tithes had before been paid, *Baumont v. Shilcot*, 172
4. If a rector send his servant for the tithe milk to the farmer's house several times morning and evening, the farmer cannot refuse to deliver the tithe milk to another person who comes for it in the rector's name, although he do not know such other person, or has reason to believe that the rector sent him, *Smith v. Maundrell*, 332

### M I L L S.

1. A water corn mill which has been erected time immemorial is tithe free, and doth not lose this privilege by being occasionally used, either partially or entirely as a lead mill, *Wilson v. Mason*, 287
2. A windmill erected within time of memory, and used for the purpose of grinding corn for distillation for a person not living in the parish, pays no tithe, *Wilson v. Mason*, 287
3. A mill formerly used as a tucking mill, and afterwards converted into an oat mill, and used only for the grinding of oats to feed the hounds of the owner is not titheable, *Hick v. Trist*, 365
4. An ancient mill is not titheable, *Hicks v. Trist*, 365
5. A mill for tithes of a hand mill, erected for grinding malt, and worked by the

hands and labour of man, dismissed, *Garrard v. Schollar*, 413

6. A mill rebuilt on the site of an ancient manor mill is still to be considered as an ancient mill, *Wetherhead v. Bradshaw*, 430
7. If the expences of a mill be more than the profits arising from the mulcture thereof, it shall not pay tithes, *Wetherhead v. Bradshaw*, 430

### M I N C H I N H A M P T O N.

The rector of *Minchinhampton*, in *Gloucestershire*, is entitled to tithes in kind, both great and small, for all titheable matters arising in *Hampton Great Down*, *Hampton Little Down*, and *Ash-ton Down*, *Heaton v. Miller*, 373

### M O D U S.

See CUSTOM.

### M O L E S C R O F T.

The impropiator of the tithes of the township of *Molescroft*, in the parish of *Saint John of Beverley*, in the county of *York*, is entitled to receive them in kind, *Lord Lonsdale v. Arnold*, 519

### M O O R C R I T C H E L L.

The rector of *Moor Critchell*, in *Dorsetshire*, is only entitled to the small tithes, but not to the tithes of corn and grain of *Moor Critchell Farm*; *Bingham v. Okiden*, 26

### M O R C H A R D B I S H O P.

1. The rector of *Morchard Bishop*, in *Devonshire*, is entitled to have the tithes of hay, clover, and ever grass arising on the farm called *Higher Southcott*, *Lower Southcott*, and *Middle Weck*, set out in grass cocks and not in *sewarths*, *Quick v. Lane*, 538
2. *Quere*. Whether there is a *modus* in this parish to pay threepence for the tithe hay of the ancient *flint meadow* belonging to *Lower Southcott Farm*; and one penny for the tithe hay of *Middle Weck*, *Quick v. Lane*, 540

### M O R P E T . I.



## A TABLE OF CONTENTS.

### MORPETH.

The rector of *Morpeth*, in *Northumberland*, is not entitled to the tithe of *Morpeth Low Common* in kind; but to a *modus* of *three shillings* in lieu thereof, viz. to a right of depasturing fifteen sheep on the said common at all times of the year, *Naylor v. Bilton*, 399

### MOTTISFONT.

The rector of *Mottisfont*, with the chapels of *Lockirley* and *East Dean*, in *Hampshire* annexed, is entitled to the tithes, both great and small, of *Forden Farm*, *Beverstock Farm*, and the Common in kind, *Jones v. Fleet*, 71

## N.

### NASING.

*Quere*, Whether there are not certain *moduses* payable to the vicar of *Nasing*, in *Essex*, in lieu of the tithes of cows, calves, milk, heifers, sheep, wool, lambs, pigs, and goslings, *Salt v. Swaine*, 297

### NESBIT.

*See STAMFORDHAM.*

### NEWTON CAP.

The tithes of *Newton Cap Common*, in the county of *Durham*, are payable to the prebendary of *Whitton*, *Cuthbert v. Wright*, 354

### NORTH CURRY.

*See CURRY.*

### NOTICE.

1. If there be a composition for small tithes payable on the tenth of *October* yearly, and they are not paid until the twentieth of *October*, and the vicar then indorses on his receipt, "Take notice you are under no agreement with me for your vicarial tithes," such notice

is sufficient to determine the composition, *Price v. Elvey*,

2. If there be a composition for tithes payable on *Lady Day* 1760, a notice, dated the sixth of *May* 1760, is sufficient to entitle the rector to tithes in kind for the year 1761, *Churchill v. Cabell*, 108
3. The owner of the corn tithes of *Harburton*, and *Hollywell*, in *Devonshire*, is entitled to have notice from the farmers to attend and see that their tithes are justly set out, *Hellyar v. Triff*, 130
4. Notice given in the month of *January*, is not sufficient to avoid a yearly composition for tithes, subsisting at *Michaelmas* preceding, *Walter v. Flint*, 295
5. If a composition expire at *Michaelmas*, and the rector give notice after that time, but before any tithes for the succeeding year become due, that he will take his tithes in kind for such succeeding year, it is sufficient, *Smith v. Maundrell*, 332
6. Notice given on the nineteenth of *December* adjudged sufficient to determine a composition ending on the twenty-sixth of the same month, *Glass v. Caldwell*, 405

### NUNEATON.

The vicar of *Nuneaton*, in *Warwickshire*, is entitled to the tithes arising in *Horton Field*, in the township of *Attleborough*; excepting *William's Field* and the *Boggy Meadow* near *Attleborough Bridge*; for the small tithes of which there is a *modus* of twelve shillings a-year, *Huddesford v. Smith*, 239

## O.

### ORPINGTON.

The custom of the parish of *Orpington*, in *Kent*, is to set out the tithes of wheat, tares, and other grain in shocks and not in sheaves, *Green v. Briggs*, 292

OSIERS.

## A TABLE OF CONTENTS.

## OSTERS.

Officers growing on boggy land seem tithe-  
able, *Salt v. Swain*, 207

297

## P.

PENSCOMB.

The rector of *Penscomb*, in *Herefordshire*,  
is entitled to the great and small tithes  
of the parish in kind, *Glas v. Caldwell*,  
403

P A D B U R Y.

The vicar of *Padbury*, in *Buckinghamshire*, is entitled to his tithes in kind, and to *Easter* offerings at the rate of twopence a-head, *Halfhead v. Merry*, 66

## PIGS.

1. A *modus* to pay two shillings and sixpence for every farrow of pigs is too rank. *Torriano v. Fraß*, 62 *note*
  2. The third pig in seven is the tithe thereof, *Horton v. Goddard*, 149
  3. A *modus* of one shilling in lieu of the tithe pig disallowed, *Hill v. Maxon*, 167
  4. A special manner of tithing pigs stated and disallowed, *Serjeant v. Adams*, 262
  5. A custom that if any owner of lands have ten sucking pigs, the vicar shall have one. but that if he have only seven, the vicar shall have one on paying one halfpenny for each pig from seven to ten. and taking the tithe pig away at a fortnight old, rejected, *Solt v. Swaine*, 298
  6. A custom to pay one pig if the number exceed seven, and be under seventeen; two pigs if above seventeen and under twenty-seven; and one pig for every ten pigs above seventeen. disallowed. *Townley v. Tomlinson*, 342
  7. A custom to pay two shillings and six-
- VOL. III.

VOL. III.

pence for every *sow* kept in a parish in lieu of tithe pigs is good, *Day v. Lake*,

## PILLING.

1. The owner of the tithes of the township of *Pilling*, in the parish of *Garsang*, in *Lancashire*, is entitled to the tithes in kind arising in the manor of *Pilling*, *Townley v. Tomlinson*, 31
2. The tenement in the township of *Pilling*, called *Heskib's Farm*, pays a *modus* of ten shillings a-year, in lieu of tithes, *Townley v. Tomlinson*, 33
3. *Quere*, If there are not *moduses* payable in lieu of the tithes of the other lands in the township of *Pilling*, *Townley v. Tomlinson*, 35
4. That part of the township of *Pilling* which was formerly part of the monastery of *Cockersand*, a monastery of the *Premonstratensian order*, is not exempted from tithes when in the immediate occupation and manurance of the owner of the inheritance, *Townley v. Tomlinson*, 338
5. There is a *modus* of twopence a-year in lieu of the tithes of garden stuff, in the township of *Pilling*; and twopence a cow that has a calf; one penny a cow that has no calf, in lieu of tithe milk and calves, *Townley v. Tomlinson*, 341
6. There seem also to be *moduses* in lieu of the tithes of corn, grain, and hay, *Townley v. Tomlinson*, 341

## PLEADING.

1. To a bill brought by the lessee of an impropriator for the tithes, the impropriator must be a party, *Henning v. Willis*, 29
2. A bill to recover the moiety of the tithes of a particular township need not make the person under whom the plaintiff claims, a party to the bill, *Townley v. Tomlinson*, 31
3. A layman cannot prescribe *in non decimatus*, *Breary v. Mandry*, 43
4. If a *modus* of fourpence a-year for every orchard in the parish be pleaded to be "in lieu of the tithes of all fruit trees therein," it is bad; for it is

P p

**ONE**

## A TABLE OF CONTENTS.

- one tithe in lieu of another; but if it be laid to be "in lieu of the fruit growing in all orchards," or "in lieu of all orchards," it might be good, *Forriano v. Peaff*, 62 *notis*
5. So a *modus* of ninepence a cow depastured in meadow land, and sixpence a cow depastured on upland, in lieu of the tithes of all cows, calves, and milk, is bad, *Forriano v. Peaff*, 62 *notis*
6. A plea that the plaintiff, as curate of a chapel by appointment of the vicar, is only entitled to twenty shillings a year, on condition that he resides in the parish, and that though he has officiated he never resided therein; and that the vicar had been non-resident for more than eighty days in a year, and therefore the appointment void, overruled, *Stirling v. King*, 88
7. If the particular day in which a *modus* is payable be omitted to be stated, the court will permit the bill to be amended, *Churchill v. Cabill*, 112
8. If a *modus* of one shilling a-year for every fat bullock be pleaded to be in lieu of the tithes of *ali barion* and unprofitable cattle, it is bad, *Boscawen v. Roberts*, 175
9. So if a *modus* of one penny a-year be pleaded to be in lieu of any small quantity of hemp sown in the parish, it is bad, *Boscawen v. Roberts*, 175
10. See also sundry *modi* stated which were rejected, as not being well laid, *Salt v. Swaine*, 297
11. And *Townley v. Tomlinson*, 342
12. A demurrer to a bill shewing for cause, that the plaintiff had controverted the defendant's right to the tithes of corn, in that part of the parish in which the estate for which tithes were demanded lay, and yet sought to have the estate declared tithe free, overruled, *Greenbill v. Peacock*, 320
13. A *modus* pleaded without stating by whom it is payable is bad, *Carter v. Anderson*, 329
14. If a defendant plead that a former vicar has received sixpence in the pound, in lieu of tithe hay and other small tithes, and the said vicar was removed by a sentence of the court of Arches, subsequent to the exhibiting the bill, the court will adjourn the cause, and permit the plaintiff to amend his bill by making him a party, *Tooker v. Moore*, 349
15. If a *modus* be set up of so much a year for certain farms and lands generally, without specifying the number of acres, or their value, it is bad, and the court will decree an account, *Edwards v. Burrows*, 374
16. A bill brought by a lessee of tithes must state the plaintiff's title to be by deed, for if it state the title to be by agreement only, it is demurrable, *Gilbert v. Brook*, 476
17. A *modus* of sixpence a year pleaded to be in lieu of all tithes, oblations, and ecclesiastical dues yearly, arising on all and every or any of the farms and lands in a particular township is bad, *Heatbota v. Appleton*, 478
18. A *modus* that the occupier of ancient cultivated lands had immemorially paid three pounds yearly at Easter, in lieu of the tithes of all and every the messuages, yards, orchards, gardens, and lands anciently cultivated and improved; and also after other lands in the place were taken in and cultivated, a like sum of three pounds a-year, for all kinds of tithes of such uncultivated lands, making together six pounds a-year, is bad, *Heatbota v. Appleton*, 478

### PLUMPTON.

The rector of Plumpton, in Northamptonshire, is entitled to both the great and small tithes of the parish in kind, *Byre v. Gibberd*, 334

### PONTELAND.

The vicar of Ponteland, in Northumberland, is entitled to agistment tithes of barren and unprofitable cattle, and to the tithes of calves in kind, *Snowden v. Shotten*, 366

### POTATOES.



## A TABLE OF CONTENTS.

### P O T A T O E S.

1. A custom to pay fourpence a-year in lieu of the tithes of potatoes tilled in a ridge in the field for family use, and not for sale, is good, *Boycarven v. Roberts*, 175
2. Potatoes are a small tithe, *Berwick v. Nicholls*, 243
3. Same point, *Travis v. Gill*, 372

### P R E S C R I P T I O N.

A layman cannot prescribe in *non decimando*, *Breary v. Manby*, 43

### P U N C K N O L E.

The rector of *Puncknole* with *Bexington*, in *Dorsetshire*, annexed, is entitled to tithes of *Bexington Farm* in kind, *Froome v. Rawlins*, 547

### Q.

### Q U A K E R S.

If a quaker buy an estate of a person who has a lease to him and his assigns of the tithes thereof, and from the usual objection to pay, or to make himself liable to the payment of them, do not take an assignment thereof, he cannot plead the agreement for the purchase including such lease, to a bill against him for the tithe of such estate, *Barber v. Elliott*, 178

### R.

### R A B B I T S.

Rabbits killed from rabbit warrens and fold are titheable, *Ball v. Robinson*, 470

### R A M S B U R Y.

The vicar of *Ramsbury*, in *Wiltshire*, is entitled to the tithes of clover seed, tur-

nip seed, and other small tithes in kind, *Garrard v. Schollar*, 415

### R A P E S E E D.

1. The customary manner of setting out the tithes of rape seed in the parish of *Great Smeaton*, in *Yorkshire*, *Hugill v. Coates*, 73
2. Rape seed is a small tithe, *Berwick v. Nicholls*, 243

### R E E D H A M.

The rector of *Reedham*, in *Norfolk*, is only entitled to one shilling a-year in lieu of the tithes of *Brotherbalmes Marsh*; but he is entitled to the tithes of all the other marsh grounds and park lands in the parish, in kind, *White v. Layton*, 154

### R O B E S T O N E.

The rector of *Robestons West*, in *Pembrokeshire*, is entitled to the great and small tithes of the parish in kind, *Rob v. Summers*, 218

### R O C H B E A R.

The manner in which the impropriator and the vicar of *Rochebear*, in *Devonshire*, are respectively entitled to the tithes of the parish, *Pyle v. Clark*, 103

### R A Y D O N.

The landholders of *Raydon*, in *Essex*, pay certain *modususes* in lieu of the tithes of lambs, pigs, and wool, and particularly fourpence a-year for every cow and calf, and twopence a-year for every farrow cow, at *Lammas*, in lieu of the tithes of cow, calf, and milk, *Day v. Lake*, 536

### R Y E G R A S S.

1. Rye grass seed is a small tithe, *Clarke v. Staples*, 121
2. See also *Cartwright v. Bailey*, 146
3. See also *Howley v. Venables*, 207

### R Y S O M E.

1. The rector of *Rysome*, in *Lincolnshire*, is only entitled to a composition real of fifteen pounds a-year, in lieu of the tithes of the parish, which consists of

## A TABLE OF CONTENTS.

one house and six hundred and seventy-one acres of land, *Bree v. Chaplin*,

410

2. The archdeacon of *Stowe*, in the diocese of *Lincoln*, is entitled to ten shillings and three halfpence a year from the owner of the parish of *Ryssme*, in lieu of synodals and procurations, *Bree v. Couplin*,

412

3. The rector of *Ryssme* is not entitled to any tithes for the large tract of land called *Grange de Lyngs*, either because it does not lie in the parish, or because it was formerly parcel of the monastery of *Barting*, a monastery of the *Premenstratensian* order, and in the manurance of the owner of it, *Bree v. Chaplin*,

414

### S.

#### SANDAL MAGNA.

1. The vicar of *Sandal Magna*, in *Yorkshire* only entitled to a yearly *modus* in lieu of the tithes of hay and agistments in the township of *Criggleston*; and this *modus* covers clover hay, *Taylor v. Beaumont*,

401

2. The impropriator of the great tithes of *Sandal Magna* is entitled to have the tithes of corn and grain set out in shocks, and the odd shock in sheaves, *Taylor v. Beaumont*,

403

3. The impropriator is only entitled to five shillings an acre in lieu of the tithes of weld, *Taylor v. Beaumont*,

402

#### SANDON.

The vicar of *Sandon*, in *Staffordshire*, is entitled to all the *small tithes* of the parish, either by *modus* or in kind; to one third of the *corn tithes* arising on the *Sandon side* of *Hardwicke Brook*; to all the *tithe hay* on both sides of the said brook, except of certain meadows covered by *moduses*; and to the *Easter offerings*, as stated in a book called the "THE EASTER ROLL," *Lowat v. Griffin*,

219

#### ST. ANDREW AUCKLAND.

*See* WHITTON.

#### S T. A N N ' S.

The parish clerk of *St. Ann's, Westminster*, need not be a person in holy orders; but the duties of the office may be performed by a person in holy orders as a *lay clerk*, either by himself or deputy; and he is entitled to receive one third of the fees paid for baptism, churchings, marriages, and burials, in the same manner as the clerk of *St. Martin's in the Fields*, is entitled to receive such fees, *Jackson v. Hinde*, 440

#### S T. B E E S.

The impropriator of the tithes of the township of *Efsdale, Myerda.c, Wardale*, and *Wardale Head*, in the parish of *St. Bees*, in *Cumberland*, is entitled to the tithe of sheep and lambs, and of the wool thereof in kind, *Stanley v. Sharpe*,

67

#### S T. E W E.

*Quere*, Whether the rector of *St. Ewe*, in *Cornwall* is entitled to the tithe of the clear gains got by any person using any craft and residing in the parish, and particularly whether he is entitled to the tenth part of the clear gain made by any inhabitant from his having been employed in the pilchard fishery by the *Master Seynors* of the parish of *Megawissy* in the said county, *Williams v. Baron*,

130

#### ST. JAMES AND ST. JOHN.

The manner in which the curates of *St. James* and *St. John* in *Cerke-aveil* are entitled to tithes and other ecclesiastical dues arising therein, *Seilon v. Parr*,

435

#### S T. K E V E R N.

1. The impropriator of *St. Kevern*, in *Cornwall*, is entitled to tithe in kind of all hook fish landed in the coes of *St. Kevern* and *Pronsfack* excepting bait fish; to the tenth part of the neat produce of all fish, except bait fish, taken by the inhabitants of *St. Kevern* and

3

fold

## A TABLE OF CONTENTS.

fold without being landed therein ; to the tenth part of the produce of all feyne and net fish, except bait fish, landed by the inhabitants of *S. Kewern*, at *Portbulla of Cewerach*; but not to any tithes from strangers for fish caught in the coves of *St. Kewern*, except they land the fish at *Pronsfack*, although the fishing craft and tackle of such strangers are moored, when not in use, in the parish of *St. Kewern, Willis v. Harris*, 185

2. The vicar of *St. Kevern* is entitled to the small tithes of the farms called *Great Tremenbere*, *Little Tremenbere*, and *Cowissock Tenement*, in kind, *Williams v. James*, 510

S T. L A U R A N C E.

1. The owner of the tithery of *St. Laurence*, in the manor of *Barton* in *Kent*, is not entitled to the tithes of *boxes* in the parish of *St. Paul*, near the walls of *Canterbury*, *Rooke v. Tolpust*, 77
2. The lands lying in the manor of *Barton*, in the parish of *St. Paul*, near the city of *Canterbury*, are not within the tithery of *St. Laurence*, *Rooke v. Hammond*, 83

S T. M A R T I N ' S .

The manner and proportion in which the clerk of *St. Martin's in the Fields* is entitled to receive his fees of office,  
*Jackson v Hyde*, 440

S T. O L A V E ' S .

The rector of *St. Olave, in Southwark*, is entitled to twenty pounds a year from the owner of a certain estate lying in or about *Glean Alley*, in the said parish, in lieu of the tithes thereof,  
*Hugbbs v. Humble,* 41

S T. P A U L.

1. The houses situated in the parish of *St. Paul*, near the walls of *Canterbury*, are not titheable to the owner of the tithery of *St. Laurence*, *Rooke v. Folputt*, 77
2. The lands lying in the manor of *Barton*, in the parish of *St. Paul*, near the city

of *Canterbury*, are not within the tithery  
of *St. Laurence, Rook v. Hamond*, 83

- 3 The impropiator of the tithes of the parish of *St. Paul*, in the town of *Malmesbury* in *Wiltshire*, is entitled to the tithes of the hamlets of *Corston* and *Rodborn* in kind, *Gale v. Carpenter*, 173

S T. P E T E R.

1. The curates and vicars choral of *St. Peter*, in *Exeter*, are entitled to certain *moduses* in lieu of the tithes arising in the parish of *Woodbury* in *Devonshire*, *Heathfield v. Trope*, 245
2. They are also entitled to the tithe of wood felled in *Hill Wood* and *Rushmore Wood*, *Trewin v. Cunnant*, 246, *notis*
3. The prebend of *Laughton*, in the *Maribing*, is parcel of the cathedral of *St. Peter*, in *York*, *Rogers v. Parkin*, 296
4. The impropiator of the parish of *St. Peter*, in the borough of *Carmarthen*, is entitled to the tithes of the farm called *Conny Tenement* in kind, *Parry v. Thomas*, 488

S T. W E O N A R D ' S .

*See* LUGWARDINE.

SEDGEFIELD.

1. The rector of *Sedgefield*, in the county of *Durham*, is entitled to the tithes of hay and depasturing barren cattle in the township of *Morden* and *Bradbury*; viz. the tenth part of the yearly value of the lands for the depasturing of the cattle belonging to the occupiers of the land; and the tenth part of the money such occupiers receive for what they take in to depasture for other persons, *The Bishop of Oxford v. Collins*, 358
  2. See also *Bishop of Oxford v. Richmond*, 360 *notis*
  3. But the right of the rector to such agistment tithes in the said township extends only to the *freehold* lands in the townships of *Sedgefield* and *Bradbury*; for the copyhold lands therein, belonging to the see of *Durham*, are discharged from the payment of all tithe
- P p 3 herbage



## A TABLE OF CONTENTS.

herbage or agistment tithe of and for all barren and unprofitable cattle fed on the said lands, *The Bishop of Oxford v. Ayre*, 361

### S H E E P   A N D   L A M B S.

1. Tithe is payable for depasturing sheep from *shearing time* until they are sold, *Henning v. Willis*, 31
2. A custom to pay two shillings yearly for every tenth lamb yeaned in the parish which continues alive on the twenty-ninth of *June*; one halfpenny a piece if four lambs; one shilling if five; one shilling and tenpence if six; one shilling and elevenpence if eight; and one shilling and elevenpence halfpenny if nine, is bad, *Stanley v. Sharpe*, 67
3. Tithes are payable both for *hog sheep* and *eider sheep*, *Stanley v. Sharpe*, 68
4. A custom to pay two shillings and sixpence for every lamb yeaned from six to ten, is good, *Tutbill v. Day*, 85
5. *Quære*, Whether a custom to pay two shillings in lieu of every tenth lamb be good, *Bowles v. Lockett*, 127
6. Agistment tithe is payable for sheep from the time they are sheared until they are sold, *Willis v. Harvey*, 199
7. A *modus* of four shillings for every ten lambs fattened; two shillings for every five such lambs; fourpence a piece for all such under five; and fourpence for all above five and under ten, yearly at shearing day; and threepence a piece for all other lambs bred in the parish in lieu of the tithes of such lambs, is a rank *modus*, and of course void, *Wood v. Harrison*, 252
8. A custom to pay the tithe of lambs on the third of *May*; the owner to pay one lamb in seven; and if more the vicar to pay halfpence in proportion to the number; but if under seven then the owner to pay a halfpenny a lamb, and *not drive them at all*, disallowed, *Sirjeant v. Ascant*, 261
9. A special manner of tithing lambs stated, *ibid.*
10. A custom that if any sheep have been brought into the parish, so as to be only wintered therein, the owner shall only pay half tithes; that if he buy sheep and shear them within a month afterwards, no tithes shall be paid; that if he sell any sheep bought or bred, which have been kept a month after they are sheared, he shall pay one penny for every sheep sold, disallowed, *Sirjeant v. Ascant*, 261
11. A custom to pay, on the first of *August*, one penny a head for all sheep bought after *Candlemas Day*, in lieu of tithe wool and lambs, and that the tithe wool and lambs of all sheep, either bred or bought, which were in the owner's possession before *Candlemas Day*, are due to the vicar, rejected, *Salt v. Swaine*, 297
12. A custom that if a farmer have but seven lambs, the vicar shall have one, paying a halfpenny for each lamb from seven to ten on *May Day*, and then taking the same away, the farmer first to chuse two, and then the vicar one, but that if there are under seven lambs, the vicar to have only a halfpenny for each lamb, rejected, *Salt v. Swaine*, 297
13. A custom that every inhabitant, having lambs yeaned in the parish, shall, on *Midsummer Day*, old style, pay to the parson twopence for every lamb under seven; one lamb for every seven lambs, the parson paying him sixpence; one lamb for every eight lambs, the parson paying fivepence; one lamb for every nine lambs, the parson paying twopence; and one lamb for every ten lambs, without paying any thing, is good, *Shaw v. Robinjen*, 325
14. A custom to pay, on *shearing day*, the full wool tithe for all sheep in the farmer's possession on *Candlemas Day*, and a different rate for sheep brought in after *Candlemas Day*, is good, *Shaw v. Robinjen*, *ibid.*
15. Sheep, although they afterwards die of the rot, are titheable, *Smith v. Moundrell*, 332
16. Sheep fed and depastured in the day time only on a large common, or sheep walk

## A TABLE OF CONTENTS.

walk in right of lands holden by the shepherd in a different parish, where the sheep are nightly folded and yearly sheared, are not titheable either for their wool or their agistment, to the parson of the parish in which they are so fed, *Ellis v. Fermor*, 382

17. A custom to pay threepence a head for sheep agisted between *Candlemas Day* and *shearing day*, and a fleece for every score brought in after the second of February is bad, *Bateman v. Ais-troppe*, 463

18. A custom not to pay for the agistment of sheep from shearing day until they are sold, is bad, *Bateman v. Ais-troppe*, *ibid.*

19. A custom to pay sixpence for every lamb fed in the *inclosures*, and fourpence for every lamb fed in the *common and lands* of a parish, in lieu of the tithe of lambs, is good, *Day v. Lake*, 536

### SHOBROOKE.

The special manner in which the rector of *Shobrooke*, in *Devonshire*, is entitled to the great and small tithes of the parish, particularly to the tithes of wheat, barley, oats, milk, firewood, garden stuff, and fruit, *Bishop of Exeter v. Skinner*, 485

### SHOT AND WAX.

A custom to pay a yard or privy tithe called "*Shot and Wax*," or "*Shot for Wax*," in lieu of the tithes of houses and fire-hearths is good, *Bateman v. Ais-troppe*, 462

### SIGSWORTH GRANGE.

The tithes of wool and lambs from sheep fed on *Sigsworth Grange*, are due to the rector of *Masson*, in *Yorkshire*, *Pickergill v. Sargison*, 275

### SMALL TITHES.

*See TITHES.*

### SMEATON.

The rector of *Great Smeaton*, in *Yorkshire*, is entitled to the tithes of the parish in kind, *Hugill v. Coates*, 73

### SPALDWICK.

The prebendary of *Stowes Longa*, in *Huntingdonshire*, is entitled to all the tithes of the prebend and of the copyhold lands in the manor of *Spaldwick* with *the Soak*, *Maddock v. Day*, 417

### SPAWNTON.

The *demefne lands* of the manor of *Spawnton*, in *Yorkshire*, are not tithe free, *Shepherd v. Hartas*, 503

### STAMFORDHAM.

The vicar of *Stamfordham*, in *Northumberland*, is only entitled to a *modus* of three shillings and fourpence at *Easter* yearly, in lieu of the tithe hay arising in the manor of *Chesburn Grange*, in the said parish; and the same *modus* respectively for the tithe hay arising in the townships of *Nesbit* and *Ouston*, *Dockwray v. Riddell*, 138

### STAPENHILL.

The vicar of *Stapenhill*, in *Derbyshire*, is entitled to the small tithes of the village of *Cauldwell* in kind, *Lloyd v. Mortimer*, 516

### STOKE ABBOTT.

The rector of *Stoke Abbott*, in *Dorsetshire*, is only entitled to eightpence a milch cow, and fourpence a heifer every year at *Easter*, in lieu of the tithe milk and calves of such cow and heifer, *Smith v. Price*, 446

### STOKE GREGORY.

*See CURRY.*

### STOKE LYNE.

1. The vicar of *Stoke Lyne*, in *Oxfordshire*, is entitled to the tithes of *furze* cut on *Bayard's Green*, though it was used in the burning of lime to make bricks with, which were used in the necessary repairs of the farm in right of which such *furze* was cut, *Ellis v. Fermor*, 381

2. The vicar of *Stoke Lyne* is not entitled to the tithe wool or to agistment tithe of sheep fed on *Bayard's Green*, in right of

## A TABLE OF CONTENTS.

of lands lying in the parish of *Tusmore*, the said sheep being only fed on that part of the said green which is in *Stoke Lyne* in the day time, and folded at night on the lands in *Tusmore*, where they were sheared, *Ellis v. Fermor*, 382

### STONEGRAVE.

The rector of *Stonegrave*, in *Yorkshire*, is entitled to the tithes of calves and milk in kind, *Wesley v. Aydon*, 383

### STOWE.

The archdeacon of *Stowe*, in the diocese of *Lincoln*, is entitled to ten shillings and three halfpence a year from the owner of the parish of *Rysole* in *Lincolnshire*, in lieu of synodals and procurations, *Bret v. Chaplin*, 412

The prebendary of *Stowe Longa*, in *Huntingdonshire*, is entitled to the tithes of the manor of *Spalewick with the Sook*, and to the tithe of so much of the hamlet of *Little Catworth* as is within the manor and not within the perambulation of the parish of *Great Catworth*, *Maddock v. Day*, 416

### STRANTON.

The vicar and not the impropriator of *Stranton*, in the county of *Durham*, is entitled to the tithe of depasturing barren and unprofitable cattle, *Watson v. Stephenson*, 370

### STRATTON.

The impropriator of *Stratton*, in *Dorsetshire*, is entitled to the tithes of *Langford Farm*, *Henning v. Willis*, 29

### SUTTON.

The vicar of *Bishop's Sutton*, in *Hampshire*, is entitled to the tithes of clover seed, rye grass seed, saintfoin seed, and other artificial grass seeds, *Howley v. Venables*, 207

## T.

### TAMWORTH.

The history of the collegiate church of *Tamworth*, and the right of appointing a vicar to the vicarage of *Tamworth*, *Saurey v. Collins*, 181

### TANNINGTON.

The vicar of *Tannington cum Brandisb*, in *Suffolk*, is only entitled to certain *modus* in lieu of the tithes of cows, calves, heifers, colts, lambs, hemp, fruits, wood, and hay, arising from broad bottomed meadows and hard land meadows, *Eade v. Gooch*, 543

### TEY.

The rector of *Little Tey*, in *Essex*, is entitled to the great and small tithes of the close called *Appleton Field*, *William v. Clarke*, 24

### THATCH.

Coarse grass cut and made into hay, and used for the purpose of thatching ricks with is not titheable, *Torpe v. Bendlowes*, 40

### THORNTON.

The rector of *Thornton la Moor*, in *Lincolnshire*, is entitled to the great and small tithes of the parish in kind, *Tennant v. Young*, 180

### THORPE.

The customary mode of setting out the tithe of *hay* in the parish of *Thorpe*, in *Derbyshire*, is to make it into winnows, and afterwards to divide it into several equal parts, and then to set out every *elventh* part, without *quoting* the same, in lieu of the tithes thereof, *Thura v. Buxton*, 379

### THURSTON.

The *Bishop of Ely*, as impropriator of *Thurston*, in *Norfolk*, and not the vicar, is entitled to the tithe hay of the parish, *Salmon v. Bishop of Ely*, 169

## TITHES.



## A TABLE OF CONTENTS.

### TITHES.

1. Clover seed, rye grass seed, and saintfoin seed are small tithes, *Clarke v. Staples*, 121
2. See also *Cortwright v. Bailey*, 146
3. See also *Gerrard v. Schollar*, 415
4. See also *Powlett v. Bates*, 466
5. Clover grass made into hay is titheable as a small tithe, *White v. Read*, 158
6. All artificial grass feeds shall pay as small tithes, *Howley v. Venables*, 207
7. So are turnips, turnip seed, and potatoes, *Bewick v. Nicholls*, 243
8. If tithes be fairly and duly set out, and notice given to the parson to fetch them away, it is a good payment of them, though he neglect so to do, and they rot on the ground, *Penfold v. Bartley*, 352
9. Potatoes are a small tithe, *Travis v. Gill*, 372

### TURNIPS.

1. Setting out the tithes of turnips by throwing out every tenth turnip, without putting them into heaps is good, *Beaumont v. Shilcott*, 171
2. Turnips shall pay tithes although they were entirely used for the feeding of sheep which had before paid tithes, *Wood v. Harrison*, 250
3. Turnip seed is small tithe, *Garrard v. Schollar*, 415
4. Turnips fed by sheep are titheable, although such sheep had previously, in the same year, paid the full tithes of wool and lambs, *Abbott v. Wilkner*, 495

### TUSMORE.

Sheep sheared in the parish of *Tusmore*, in *Oxfordshire*, on the farm of the owner of the sheep, though they are daily fed, in right of such farm, on a common in the parish of *Stoke Lyne*, shall pay tithe wool to the vicar of *Tusmore*, and not be liable to any agistment tithes to the vicar of *Stoke Lyne*, *Elis v. Farmer*, 381

### U.

#### VETCHES.

*Quere*, Whether a crop of vetches ploughed into the ground, and thereby rendered a sort of manure to meliorate the ground for a second crop, is liable to be tithed, *Henning v. Willis*, 30

#### UPPOTTERY.

The vicar of *Uppottery*, in *Devonshire*, is entitled to the tithes of hay, and to all other tithes, except of corn and grain, arising on *Toilen Farm*, *Moorhays Farm*, and on the other ancient farms in the parish, *Jenkins v. Pyme*, 280

#### UPSAL PARK.

See *KILVINGTON*.

### W.

#### WALKINGTON.

The rector of *Walkington*, in *Yorkshire*, is only entitled to two shillings and sixpence a year at *Easter*, in lieu of all tithes, great and small, of *the Hall Garb*, *the Manor Lands*, *the East Wood*, and *the West Wood*, *Liddell v. Hancock*, 161

#### WALLOP.

The vicar of *Nether Wallop*, in *Hampshire*, is entitled to the tithes of calves, pigs, lambs wool, garden stuff, and eggs, arising on *Bury Court Farm*, *Garlick Farm*, *Place Farm*, *Pyle Farm*, and *Middle Walled Farm*, in kind; and to twopence a year for every milch cow fed thereon, in lieu of tithe milk, *Hill v. Maton*, 167

#### WALTON.

*Quere*, Whether the rector of *Walton*, near *Liverpool*, in *Lancashire*, is entitled to the tithes arising in the lordship of *Symond's Wood* in kind, or only to a *modus* of sixpence a year in lieu thereof; and to a *modus* of three pounds a year in lieu of the tithes of the anciently improved lands; and another *modus* of three

## A TABLE OF CONTENTS.

three pounds a year for the *uncultivated*  
lands of the parish, *Heathcote v. Ap-*  
*pleton*, 478

### WALTON GRANGE.

*See GNOSALL.*

### WATERBEACH.

The vicar of *Waterbeach*, in *Cambridge-*  
*shire*, is entitled to one third part of  
the tithes arising on the lands formerly  
belonging to *Denny Abbey*; to all the  
tithes and profits of *The Adventurer's*  
*Lands*; and to the small tithes of the  
other parts of the parish, *Masters v.*  
*Standish*, 53

### WELD.

A custom to pay five shillings an acre in  
lieu of the tithes of weld is good,  
*Taylor v. Beaumont*, 402

### WEST CHALLOW.

If a tack shepherd, living in the parish of  
*West Challow*, in *Berkshire*, feed sheep  
from the twelfth of *May* to the sixth of  
*June*, on that part of the common called  
*the Court Down* which is in the parish  
of *Letcombe Bassett*, and then drive them  
into the parish of *West Challow* and  
shear them, and afterwards feed them  
on *the Court Down* until they are sold,  
the tithe of their wool shall be paid to  
the rector of *Letcombe Bassett*, *Wills v.*  
*Page*, 299

### WEST HAM.

1. The lay impropriator of *West Ham*, in  
*Essex*, is entitled to the tithes of *West*  
*Ham Farm* in kind, although the said  
farm was formerly parcel of the pos-  
sessions of the abbey of *Stratford Lang-*  
*thorne*, one of the greater abbeys, and of  
the *Cistercian* order, *Peacock v. Green-*  
*hill*, 315
2. See also *Greenhill v. Peacock*, 320

### WEST HATCH.

*See CURRY.*

### WESTMILL.

The rector of *Westmill*, in *Herefordshire*,  
is entitled to the great and small tithes  
of *Westmillbury farm* in kind, *Law v.*  
*Bowyer*, 521

### WESTMINSTER.

1. The dean and chapter of *Westminster*,  
as impropriator of *Maiton*, in *Wor-*  
*cestershire*, are entitled to the great and  
small tithes of *Spout Farm*, *Horngreen*  
*Farm*, *Hall Court Farm*, and *Croft*  
*Farm* in kind, the Dean and Chapter of  
*Westminster v. Gwilliam*, 253
2. The manner in which the parish clerks  
of *St. Ann*, *Westminster*, and *St. Martin*  
in *the Fields*, are entitled to their fees,  
*Jackson v. Hinde*, 440

### WHAPLOAD.

1. The vicar of *Whapload*, in *Lincolnshire*,  
is entitled to the agistment tithe of all  
barren and unprofitable cattle under a  
year old, in kind; to a *modus* of four-  
pence an acre in lieu of the tithes of  
barren and unprofitable cattle above a  
year old; to the agistment of all sheep  
depastured from the shearing day until  
they are sold; to the tithe of lambs  
where they are under the number of  
five; and to the tithe of hay in kind,  
*Bateman v. Aisroppe*, 460
2. The governor of the free grammar  
schools of *Okeham* and *Uppingham* are  
the lay impropriators of the great tithes  
of this parish, and are entitled to the  
tithes of corn, grain, wool, lambs above  
five, hemp, flax, and the agistment of  
sheep sold before shearing day, *Bate-*  
*man v. Aisroppe*, 465
3. The lands called *Park Coates* in this  
parish are not tithe free, 464
4. *Quere*, If there are not several *mo-*  
*dules* for other titheable matters payable  
in this parish, 462

### WHEAT.

*See CORN.*

WHIT.

## A TABLE OF CONTENTS.

### WHITCHURCH CANONICORUM.

The manner in which the vicar of *Whitchurch Canoniarum*, in *Dorsetshire*, is entitled to the tithes of the chapelry of *Stanton St. Gabriel*, *Hawkins v. Channon*, 452

### WHITTON.

The impropiator of the prebend of *Whitton*, in the parish of *St. Andrew Auckland*, in *Durham*, is entitled to the tithes, both great and small, of the townships of *Newton Cap* and *Hunwick*, and particularly to the tithes arising on *Newton Cap Common*, inclosed under an act of parliament, *Guthbert v. Wright*, 354

### WICKHAM.

The special manner in which the tithes of corn and grain are to be set out in the parish of *Wickham St. Paul*, in *Essex*, *Erskine v. Ruffle*, 240

### WOOD.

1. The owner of the wood is liable to the tithes although he has sold the fall to another person, *Hole v. Buck*, 23
2. The wood cut from the hedgerows of a farm, if cut for sale, is titheable, *Hole v. Buck*, 23
3. Old decayed fruit trees of fifty years standing, and underwood cut down for firing, are not titheable, *Fleming v. Brewer*, 195
4. The wood called *black poles* is titheable, *Amler v. Jackson*, 225
5. A custom that every inhabitant occupying lands in a parish shall pay three-halfpence on *Easter Monday*, in lieu of all tithes of wood, thorns, and plathing of hedges cut during the preceding year on such grounds, is good, *Sharw v. Robinson*, 326
6. Trees which have grown from the falling of the mast or seed, if cut down under twenty years growth, are titheable, *Walbank v. Hayward*, 512
7. Reeds or germins cut from the stumps of trees which were above twenty years

growth before they were cut down, are titheable, *Walbank v. Hayward*, 512

8. Reeds or germins cut from the stools of beech trees, for the purpose of thinning the woods and enabling the other trees to grow the quicker, are titheable, *Walbank v. Hayward*, 512
9. Coppice and underwood cut by the lug and laid in drifts, are titheable, *Walbank v. Hayward*, 513

### WOODBURY.

1. The custos and vicars choral of *Saint Peter*, in *Exeter*, are entitled to certain *modus* in lieu of the tithes arising in the parish of *Woodbury*, in the county of *Devon*, *Heathfield v. Trosse*, 245
2. But they are entitled to the tithes of wood felled in *Half Wood* and in *Rushmore Wood* in kind, *Trewin v. Cunnent*, 246 *notis*
3. The customary manner of setting out the tithes of wheat and other grain in the parish of *Woodbury*, *Heathfield v. Trosse*, 247

### WOOL.

1. The wool of lambs shorn on *Midsummer Day* is titheable, although tithe has been paid for the lambs on *Saint Mark's Day*, *Pulteney v. Utterman*, 17
2. Tithe is payable of the wool not only of *elder sheep*, but of the first clipping of lambs and of *bog sheep*, *Stanley v. Sharpe*, 68
3. If a farmer rent the *glebe lands*, and buy lambs in the month of *August*, and feed them thereon till the tenth of *October*, and shear them in four days after they are bought, the tithe of the wool is payable to the vicar, *Beaumont v. Shilcott*, 172
4. The tithe of wool shall be paid to the parson of the parish in which the sheep are fed, although they were sheared in a different parish, *Wells v. Page*, 299
5. A custom to pay full tithes of wool for all sheep brought into before, and being in the parish on *Candlemas Day*, and a rate tithe from sheep brought in after that day, is good, *Sharw v. Robinson*, 326
6. Tithe



## A TABLE OF CONTENTS.

6. Tithe wool is payable, although the sheep afterwards die of the rot, *Smith v. Maundrell*, 332

7. If sheep be daily fed on a common or sheep walk in the parish, and nightly folded and yearly sheared in another, on a farm to which such right of common is appurtenant, the tithe wool shall be paid to the parson of the parish in which the farm lies, *Ellis v. Farnor*, 382

8. A custom that wool shall be tithed at shearing time by the owner taking two fleeces, then the vicar one, and then the owner seven, and so on; the owner to pay twopence immediately, or at Michaelmas, for the odd fleeces, deserted, *Bedford v. Sambell*, 515

### WORSTEAD.

The manner in which the impropriator of *Worstead*, in *Norfolk*, is entitled to the

tithe of wheat, barley, and oats, *Brograve v. Macr*, 396

### WROXETER.

The vicar of *Wroxeter*, in *Shropshire*, is entitled to the tithe of clover seed and rye grass seed, *Cartwright v. Bailey*, 146

### WYBERTON.

The rector of *Wyberton*, in *Lincolnshire*, is only entitled to twopence an acre, on *Easter Monday*, for all meadow land mowed the preceding year, in lieu of the tithe of the hay; to twopence an acre, in lieu of agistment tithes of barren cattle fed on pasture lands; to a particular mode of tithing sheep brought into the parish after *Candlemas Day*; and to another mode of tithing lambs, *Shaw v. Robinson*, 323



END OF THE THIRD VOLUME.